



1 Audio Operator: Carl Hauger

2 Transcribed By: Michael Keating

3 - - -

4 Proceedings recorded by electronic sound  
5 recording; transcript produced by computer-aided  
6 transcription service.

7 - - -

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (The following was heard in open court at  
2 9:32 a.m.)

3 THE COURT: All right, good morning,  
4 everyone.

5 MR. HIPPLE: Good morning, Your Honor.

6 MR. BERKOWITZ: Good morning, Your Honor.

7 THE COURT: Good morning. Okay. Are you  
8 ready to proceed? You can take your coats off. I know  
9 it's very hot in here. I'm sorry about that. We  
10 turned it down to 60.

11 (Pause in proceedings.)

12 THE COURT: Yes, we have the fans on high.

13 MR. BERKOWITZ: Understand.

14 THE COURT: You can take your jacket off.  
15 Not a big deal.

16 MR. BERKOWITZ: It will come off eventually I  
17 think.

18 THE COURT: All right. Are we ready? Mr.  
19 Hipple, you have to resume the stand, okay?

20 (Pause in proceedings.)

21 THE COURT: He's still under oath. Good  
22 morning, Mr. Hipple.

23 MR. HIPPLE: Good morning.

24 THE COURT: Good morning.

25 MR. BERKOWITZ: Your Honor, there was a

1 question yesterday about some pages being out of order  
2 in Exhibit 37 and I did put those pages in order --

3 THE COURT: Okay.

4 MR. BERKOWITZ: -- on the wit -- and I'd just  
5 like to go back and straighten out just so that there's  
6 no confusion --

7 THE COURT: Fine.

8 MR. BERKOWITZ: -- and we get the pages in  
9 order.

10 THE COURT: Okay.

11 CLEMENT HIPPLE, Defendant, Previously Sworn,  
12 Resumes.

13 DIRECT EXAMINATION

14 BY MR. BERKOWITZ:

15 Q And, Mr. Hipple, the book on the ledge in front of  
16 you, you see Exhibit 458?

17 A Yes.

18 Q You remember that's the company that's listed as  
19 SCI, LLC?

20 A Yes, that is correct.

21 Q Okay. And I think you told us that that was you  
22 thought a typographical error or some mistake?

23 A No, I thought -- no, that company was -- I'm not  
24 certain of -- because these companies go back to 1999.  
25 Alls I'm certain of is that there was a company called

Mr. Hipple - Direct

5

1 S -- Scientific Chemical, Incorporated, which would be  
2 SCI --

3 Q Right.

4 A -- and another company called SCIX.

5 Q Okay.

6 A That I am certain of.

7 Q Okay. And now in front of you we have a document,  
8 SS4, which is an application for employer  
9 identification number, That's Exhibit 458.

10 A That is correct.

11 Q Okay. And you see that that is for a company  
12 that's called SCI, LLC?

13 A Yes.

14 Q All right. And if you look down to line ten, it's  
15 got the date of establishment of February 8, 1999?

16 A Correct.

17 Q Okay. And that was the same date that SCIX was  
18 formed?

19 A I'm not certain of that.

20 Q Okay. Now, I would like you to turn to page --

21 THE COURT: What is the number we're on  
22 again?

23 MR. BERKOWITZ: 458, which is the --

24 THE COURT: What exhibit though?

25 MR. BERKOWITZ: That -- oh, I'm sorry,

Mr. Hipple - Direct

6

1 Exhibit 37.

2 THE COURT: All right, thanks.

3 MR. BERKOWITZ: And, again, it's Ex -- Hipple  
4 458 and at the top it's application for an employer  
5 identification number, okay, and that's SCI, LLC.

6 THE WITNESS: SCI, I guess comma, LLC,  
7 February 8th, 1999.

8 BY MR. BERKOWITZ:

9 Q Okay. And let's go to page 459. Okay, if you look  
10 at the bottom, you'll see 459. I didn't -- there was a  
11 duplicate of the SS4 and I didn't --

12 A Still is --

13 Q -- want to remove anything. They're the same.

14 A I have two 458s.

15 Q Go to the next one, 459.

16 A 458. Okay, 459.

17 Q Okay. And we see that is the operating agreement  
18 for a company called SCI, LLC?

19 A That is correct?

20 Q Correct?

21 A That's what it says.

22 Q Okay. And if we go forward to page ten, Hipple  
23 468, but it's ten of the agreement.

24 A Okay.

25 Q And that appears to be your signature on that page?

Mr. Hipple - Direct

7

1 A Yes.

2 Q And that appears to be Brian Hipple's signature on  
3 that page?

4 A Yes.

5 Q Okay. And let's go forward now --

6 A And also --

7 Q -- to Hipple --

8 A -- the signature of Robert Barks.

9 Q Yes.

10 A Okay.

11 Q Let's go forward to page Hipple 471, which is page  
12 A2.

13 A Yes.

14 Q Do you see that?

15 A Uh-huh.

16 Q And look at paragraph 2.1.

17 A Okay.

18 Q All right? And Scientific Chemicals, Inc., is the  
19 tax matters number.

20 (Pause in proceedings.)

21 Q Right?

22 A I'm sorry?

23 Q Paragraph 2.1, it lists Scientific Chemicals, Inc.,  
24 as the tax matters --

25 A Yes, it says that on there. That is correct.

Mr. Hipple - Direct

8

1 Q Okay. So it appears there may be another company,  
2 SCI, LLC?

3 A No.

4 Q Okay. All right. Let's go back to where we  
5 stopped yesterday. We were looking at Exhibit 14,  
6 Plaintiff's Exhibit 14. The matter is the licensing  
7 agreement, it's volume one.

8 A Uh-huh.

9 Q Do you remember we were looking at this yesterday?

10 A Yes, I think so.

11 Q Okay. And this is the agreement where after you  
12 had transferred all the assets that you repossessed  
13 from SCIX, you transferred them to Complete Group, LLC?

14 A Yes.

15 Q The Nevis company that you owned with Ms. Domices?

16 A Yes.

17 Q And it transferred -- under the background, it says  
18 "is the owner of certain assets including the  
19 intellectual property described on Exhibit A."

20 A Yes.

21 Q Do you see that?

22 A Uh-huh.

23 Q And we have had some discussion about what is the  
24 appropriate Exhibit A. Do you recall that?

25 A Yes.



Mr. Hipple - Direct

9

1 Q And one of them is the one that says physical  
2 assets I have taken, correct?

3 A I'm not certain, but --

4 Q Well, we can go back and look at that just so we're  
5 -- you're certain that we're talking about the same  
6 thing.

7 (Pause in proceedings.)

8 Q And I will get for you Plaintiff's Exhibit 130.

9 (Pause in proceedings.)

10 Q And I'm handing you Exhibit 130. And do you see at  
11 the top it says, "SCIX physical assets I have taken"?

12 A Yes.

13 Q Okay, thank you. Now, the license agreement refers  
14 to intellectual property, and I think we agreed that  
15 there's no intellectual property on the physical assets  
16 I take it?

17 A Again, define intellectual property to me.

18 Q It's not something you could pick up and put in a  
19 box, a logo --

20 A I have nothing.

21 Q -- a trade name?

22 (Pause in proceedings.)

23 A Yes, these seems that there are no physical assets.

24 Q Okay.

25 A I mean no -- they are physical assets.

Mr. Hipple - Direct

10

1 Q Okay. And the license agreements refers to  
2 intangible assets, correct? Do you see right --

3 A That says --

4 Q Including the intellectual property.

5 A Of creating assets, including assets, so it's  
6 creating assets.

7 Q Okay.

8 A Okay?

9 Q I just want to --

10 A What --

11 Q -- make sure we're on the same page here.

12 A What does that mean?

13 Q And it says including the intellectual property,  
14 right?

15 A So it's two things, basically, right?

16 Q Okay. Now I'm going to show you --

17 MR. BERKOWITZ: Your Honor, there is --

18 THE WITNESS: So the creating assets could be  
19 the physical assets?

20 BY MR. BERKOWITZ:

21 Q We have an Exhibit A and I'm just trying to clarify  
22 which one --

23 A Well, that's not what my question is.

24 Q Okay.

25 A My question is --

Mr. Hipple - Direct

11

1 Q Well, you get to -- you get to do the questions  
2 later. Let me -- let me go ahead with my testimony.  
3 I'm going to show you Defendant, this is your Exhibit  
4 D, D-3.

5 A Yeah.

6 Q It's in the black binder.

7 A Yep.

8 Q D-3.

9 A Okay.

10 Q And, Mr. Hipple, you'll see -- D-3, recall we  
11 looked at this before?

12 A Yes.

13 Q Okay.

14 A UCC.

15 Q This is the UCC 1 that was filed.

16 A Correct.

17 Q And it has a big Exhibit A, correct?

18 A It says "List of assets."

19 Q Yes. Okay?

20 A Uh-huh.

21 Q And it lists the website and the 800 number --

22 A Right.

23 Q -- and it's got the Steel Seal logo --

24 A Right.

25 Q -- rights to the name, confidentiality agreement

Mr. Hipple - Direct

12

1 with Colonial Chemical --

2 A Right.

3 Q -- and the formula --

4 A And they're all --

5 Q -- okay?

6 A And --

7 Q And that's in Exhibit A?

8 A Well, it has more written in there than that.

9 Q Yes, it does. Yes, it does. And we can look at  
10 them all, but I'm just looking at the intellectual  
11 property.

12 So it seems to me -- wouldn't it seem to you  
13 that the Exhibit A that's referred to in the licensing  
14 agreement is this Exhibit A from the security interest?

15 A I'm not sure about that because I didn't draft the  
16 language --

17 Q Okay.

18 A -- and I don't understand the language.

19 Q Okay. But it does say what we -- what I  
20 represented that it said?

21 A Well, it says what it says, but I -- like I said, I  
22 never drafted the language.

23 Q Okay. Now, this license agreement is an exclusive  
24 license to Steel Seal Pro, your son's company, Brian's  
25 company?

Mr. Hipple - Direct

13

1 A Where does it say that?

2 Q Well, it says that if you look under terms and  
3 conditions, paragraph one.

4 THE COURT: What number is that again?

5 MR. BERKOWITZ: This is -- I'm sorry --  
6 Exhibit -- Plaintiff's Exhibit 14 --

7 THE COURT: Right. Okay.

8 MR. BERKOWITZ: -- in the white binder.

9 THE COURT: Yes.

10 BY MR. BERKOWITZ:

11 Q And let me just read this paragraph one,  
12 "Licensor," that's Complete Group, LLC, "hereby grants  
13 the licensee," which is Steel Seal Pro, "an exclusive  
14 but conditionally revocable license to market and  
15 collect proceeds from customers with respect to a  
16 product known as Steel Seal," correct?

17 A That's what it says.

18 Q Okay. And you understand what the word,  
19 "exclusive," means?

20 A I understand, "exclusive," but I don't understand  
21 "collect" and "revocable."

22 Q Okay. That's okay. Now, under this agreement, if  
23 you look in paragraph three, what Steel Seal Pro got  
24 was the right to -- they were going to be paid \$10,000  
25 a month, correct, for its services?

Mr. Hipple - Direct

14

1 A Yes, correct.

2 Q And no more?

3 A No.

4 Q And all the rest of the money would go to you? And  
5 by you, I'm sorry, Complete Group?

6 A Right.

7 Q And the way it got to Complete Group would be  
8 payments made to A&C Building --

9 A And Maintenance.

10 Q -- and Maintenance?

11 A Yes, that's correct.

12 Q Okay. Now, I'd like you to look at the second  
13 page. And do you see the signatures there?

14 A Yes.

15 Q Now, that looks like Brian's signature, doesn't it?

16 A Yes.

17 Q And a matter of fact, in your affidavit, which is  
18 Exhibit 25, at paragraph 58, and I'll read it to you if  
19 you don't want to look at it.

20 A Now, hold on, let me get there. Paragraph what?

21 Q Paragraph 58 of Exhibit 25.

22 (Pause in proceedings.)

23 A Go ahead.

24 Q Okay? And you look at the last sentence and it's  
25 referring to the license agreement, which we just

Mr. Hipple - Direct

15

1 looked at.

2 A 58?

3 Q Yes, paragraph 58. Are you there?

4 A I'm there now.

5 Q Okay. And you look at the last sentence, "I  
6 recognize the handwriting on the license agreement as  
7 belonging to Brian Hipple."

8 A Oh, you want me to look at the last page?

9 Q No, paragraph 58, the last sentence in paragraph  
10 58. Do you see that?

11 A Yes.

12 Q "I recognize the handwriting on the license  
13 agreement as belonging to Brian Hipple."

14 A Yes.

15 Q Okay. Now, yesterday, there was a question about a  
16 letter and Brian Hipple's signature, and I'd like you  
17 to turn to Exhibit 18, page two.

18 (Pause in proceedings.)

19 Q And you had some concerns about the signature on  
20 that letter.

21 A No, I had no concerns about it. I can't comment on  
22 that letter because it's not --

23 Q But that appears to be Brian's signature?

24 A Well --

25 Q Isn't that correct?

Mr. Hipple - Direct

16

1 A If you look at that signature -- what was -- where  
2 were we just a minute ago?

3 Q We were at Exhibit 14 and we looked at paragraph 58  
4 of Exhibit 25. We looked at the licensing agreement.

5 A They look a little different to me.

6 Q Okay. So you can identify the signature on the  
7 licensing agreement, but you can't identify --

8 A I can't really identify the signature, okay? I  
9 mean I never actually saw Brian's signature that much.

10 Q Okay. You were able to identify it though in the  
11 license agreement?

12 A Well, I'm assuming it's Brian's signature, yes.

13 Q Okay. But -- and you've seen it?

14 A Oh, yeah, I'm assuming it has to be on the  
15 license -- on this, yes.

16 Q Okay.

17 A It has to be.

18 Q Now --

19 A It's the license agreement.

20 Q -- back on Exhibit 14, the licensing agreement --

21 A Right.

22 Q -- after October 18th, Steel Seal was sold  
23 exclusively by Steel Seal Pro, correct?

24 A As of October 18th.

25 Q Okay. So that's correct? And you did not own any



Mr. Hipple - Direct

17

1 interest in Steel Seal Pro?

2 A That is correct.

3 THE COURT: What year was that, October 18th  
4 what year?

5 MR. BERKOWITZ: October 18th, 2010.

6 THE COURT: All right.

7 THE WITNESS: No, 2012.

8 MR. BERKOWITZ: 2010. If you would like to  
9 look at --

10 THE WITNESS: Oh, I'm sorry, yeah, 2010.

11 MR. BERKOWITZ: 2010.

12 THE WITNESS: I'm sorry.

13 THE COURT: To current? To present?

14 MR. BERKOWITZ: Well, Steel Seal Pro has,  
15 again, defaulted and disappeared from the face of the  
16 earth, but we will deal with that --

17 THE COURT: All right.

18 MR. BERKOWITZ: -- soon.

19 THE COURT: Okay.

20 BY MR. BERKOWITZ:

21 Q So if we look at Exhibit 14, the license agreement,  
22 you're transferring assets, including intellectual  
23 property, right?

24 A That's what it --

25 Q That's what is says in the first thing.

Mr. Hipple - Direct

18

1 A What paragraph again?

2 Q The first one under background.

3 A Okay.

4 Q And --

5 A "Of certain assets, including intellectual  
6 property."

7 Q Okay, yes. And in Exhibit 18, the second page,  
8 Complete Group is the successor in interest to the  
9 confidentiality agreement concerning the formula of  
10 Steel Seal?

11 A What number?

12 Q That's para -- Exhibit 18, page two.

13 A But what number?

14 Q That's the letter we just looked at.

15 A Yeah, I6 or what?

16 Q There's only -- on Exhibit 18 there's only two  
17 pages.

18 A Oh, I'm sorry, I'm back -- I'm still on the license  
19 agreement. Okay. Okay, Exhibit 18, what's your  
20 question?

21 Q Okay. So you transferred -- the secret formula and  
22 the confidentiality agreement is now owned by Complete  
23 Group. That's what these things say, correct?

24 A Okay. You're losing me. You're bouncing, okay?

25 All right? Let's take it a little slower.

Mr. Hipple - Direct

19

1 Q Sure.

2 A All right.

3 Q Let's look at -- we looked at the first paragraph  
4 in the licensing agreement.

5 A Again, what par --

6 Q This is Exhibit 14, background.

7 A Okay. 14 background, yes, it says that --

8 Q It says, "Complete Group owns assets, including the  
9 intellectual property described on Exhibit A."

10 A Okay. Under background, it says, "Complete Group  
11 owns?"

12 Q It says licensor, and if you look above --

13 A Okay.

14 Q -- Complete Group is the licensor.

15 A Okay. So then okay. All right.

16 Q Okay?

17 A I'm in agreement with that, yes.

18 Q Okay. And if we look at Exhibit 18, the second  
19 agreement, it says -- this is the letter with Brian's  
20 signature that you -- here you dispute.

21 A Right.

22 Q "Clement Hipple's company, Complete Group, is the  
23 successor in interest to the confidentiality agreement  
24 executed between SCIX, LLC, and Colonial Chemical on  
25 March 29, 1999, regarding the formula of a chemical

Mr. Hipple - Direct

20

1 sealant now known as Steel Seal," correct?

2 A That's --

3 Q That's what it says?

4 A That's what the letter says.

5 Q Okay. And we looked at that confidentiality  
6 agreement yesterday. Do you recall that?

7 A But I can't verify the letter itself.

8 Q Understand. Understand that. Now, after you  
9 transferred the exclusive rights to sell Steel Seal to  
10 Steel Seal Pro so that Steel Seal Pro would be the only  
11 company that sold Steel Seal, the product, Steel Seal,  
12 was sold in the same manner and for the same price as  
13 SCIX sold the product?

14 A Of course.

15 Q And you said that as a result of selling that  
16 product, it obtained \$110,000?

17 A Somewhere in that area, yes.

18 Q Okay. Well, we could look at paragraph --

19 A Yeah, close enough, yes.

20 Q I'm sorry. All right, well, let's make sure we get  
21 it right. Exhibit 25, paragraph 67.

22 (Pause in proceedings.)

23 Q Have you -- have you found that, Mr. Hipple?

24 A Yes, I'm reading it right now.

25 (Pause in proceedings.)

Mr. Hipple - Direct

21

1 A That is correct.

2 Q Okay. And it says -- the second sentence in  
3 paragraph 67, "As a result, I estimate that all the  
4 SCIX assets that I repossessed were sold for a total of  
5 \$110,000." That's what we just --

6 A Right, that's correct.

7 Q -- agreed to before? Okay.

8 Now, Mr. Hipple, let's get Exhibit 130, and  
9 that is in book number four. Let me get that for you,  
10 sir.

11 A All right.

12 Q Do you have book four there?

13 A Well, here's 130.

14 Q Yes, I'm going to get you a better number.

15 (Pause in proceedings.)

16 Q Yes. Now, let's look at Exhibit 130. That's the  
17 physical assets you obtained. Now, I just want to make  
18 sure I understand. We saw that there seemed to be some  
19 intellectual property taken because we talked about  
20 that before, but if you look at the second page of  
21 Exhibit 130, physical assets I've taken, do you see  
22 there you took 353 cases of 16-ounce Steel Seal?

23 A That is correct.

24 Q Okay. And there are 12 bottles per case?

25 A That is correct.

Mr. Hipple - Direct

22

1 Q Okay. So I did the math. If you want to multiply  
2 out 353 cases of 16-ounce bottles, you multiply 353 --  
3 and I have a calculator if you want to do it, but I  
4 have done the math.

5 A Okay, continue.

6 Q So I can do 353 times 12, that's 4,236 bottles.  
7 I'm going to write it down so it's easy to follow.

8 A Yeah, why don't you write it on the board there so  
9 we can all see it?

10 (Pause in proceedings.)

11 Q Okay? And if you also look, it says you picked  
12 up -- or you had an additional 80 cases of 16-ounce  
13 bottles, correct?

14 A Right.

15 Q Okay, so if we multiply 80 times 12, that gives us  
16 960?

17 A That's correct.

18 (Pause in proceedings.)

19 Q I don't want to embarrass myself with the math, but  
20 I'll try and do it right here. 5,196 bottles, that's  
21 the number of bottles that you picked up?

22 A That is correct.

23 Q Okay. And you said you sold it for the same price  
24 that SCIX sold it?

25 A No, I said I sold --

Mr. Hipple - Direct

23

1 Q Well, you didn't sell it? Steel Seal Pro sold it,  
2 right?

3 A Steel Seal Pro sold it, okay?

4 Q Okay.

5 A But, the point that you're missing, and if you  
6 would have looked at the inventory, like more than half  
7 of that was England, UK bottles.

8 Q These are 16 -- we'll -- that's part of your case.  
9 Let's carry the math out for --

10 A Well --

11 Q -- us here.

12 A Okay. Well, let's not --

13 Q It says for the same prices as SCIX. Now, what was  
14 SCIX selling --

15 A Well, I --

16 Q -- 16-ounce -- excuse me -- 16-ounce bottles on the  
17 internet for? Do you know?

18 A I'd like to change my previous statement that it's  
19 all sold for the same price on the internet. That is  
20 not correct. It was sold for -- some were sold for the  
21 same price on the internet, and others were sold at \$12  
22 per bottle.

23 Q Mr. Hipple, I'm going to ask you to look at Exhibit  
24 D -- this is Defense Exhibit 50.

25 (Pause in proceedings.)

Mr. Hipple - Direct

24

1 Q And, Mr. Hipple, are you familiar with that  
2 screenshot?

3 A Not really, no --

4 Q Okay.

5 A -- but I understand.

6 Q If you look here at the top --

7 A Uh-huh.

8 Q -- it says on May 22nd, 2010 --

9 A Right.

10 Q -- this is a screenshot of the SCIX.

11 A That is correct.

12 Q See that at the bottom?

13 A That is correct.

14 Q Now, what size bottle was the four cylinder?

15 A 16-ounce bottles.

16 Q Okay. So it has a price listed there of 44.95.

17 (Pause in proceedings.)

18 Q Okay? So if I multiply 44.95 times 5,196 bottles,  
19 I did the math and I'm going to represent to you that  
20 that comes out to \$233,000. Okay?

21 A No.

22 Q You --

23 A I don't agree with --

24 Q You don't agree with the math?

25 A I don't agree with it, no.



Mr. Hipple - Direct

25

1 Q I'll let you do the calculation yourself then.

2 A No, I don't agree with --

3 Q 5,000 --

4 A -- the price of 5,196 at 44.95.

5 Q I hear you and you'll get to put on your case.

6 A Okay.

7 Q But I'm showing you the Steel Seal price --

8 A Right.

9 Q -- sold by SCIX and it was 44.95, correct? That's  
10 what is shows right in that exhibit, right? So if I do  
11 the math, when you sell those bottles that you picked  
12 up --

13 A Right.

14 Q -- you didn't pay for them, they didn't cost you  
15 anything, you sold it and you got \$233,560. Steel Seal  
16 Pro got that.

17 A Right.

18 Q Correct?

19 A No, not correct.

20 Q Okay. Now, in addition, if you look at the assets  
21 I've taken, you picked up 22 cases of eight-ounce  
22 bottles, am I correct?

23 A Correct.

24 Q Okay. So that comes out, if you do the math, 528  
25 bottles. Does that sound right or would you like to do

Mr. Hipple - Direct

26

1 the math?

2 A No, that's incorrect.

3 Q Do you mean 22 cases times 24 bottles per case --

4 A Oh, you're doing 24 bottles. That's what I wanted  
5 to tell you, yeah.

6 Q Well, that's -- these are the eight ounce cases.

7 A Right, yeah. I wanted to remind you there's 24 to  
8 a case.

9 Q Right.

10 A Okay.

11 Q So it's 528 bottles.

12 A Okay.

13 Q And would you agree with me that the internet price  
14 is \$25 a bottle for an eight-ounce bottle?

15 (Pause in proceedings.)

16 A Yes.

17 Q Okay.

18 A Because they're sold as a six cylinder.

19 Q Okay. So if we multiply 528 bottles times \$25 a  
20 bottle, we get \$13,200.

21 (Pause in proceedings.)

22 Q And if I did the math correctly, and I think I did,  
23 that comes out to \$246,760 --

24 A Again, I --

25 Q -- correct?

Mr. Hipple - Direct

27

1 A No, again, I object to the format that you are  
2 using.

3 Q Okay.

4 THE COURT: You disagree with the price,  
5 right?

6 THE WITNESS: I disagree with the --

7 THE COURT: The price?

8 THE WITNESS: -- price, yes, Your Honor.

9 THE COURT: Right.

10 THE WITNESS: Okay.

11 MR. BERKOWITZ: All right.

12 THE COURT: We'll talk about that later.

13 MR. BERKOWITZ: Okay.

14 BY MR. BERKOWITZ:

15 Q Mr. Hipple, if you could look at Exhibit D-51,  
16 Defendant's Exhibit D-51? It's the next page. It's  
17 right here. I'm going to turn it for you. It's  
18 another screenshot. Do you see that? And at the  
19 bottom on Exhibit D51, your exhibit, again, it's got  
20 SCIX?

21 A Right.

22 Q Okay? And this screenshot is December 7th, 2010?

23 A Right.

24 Q And do you see the prices are the same?

25 A Yes.

Mr. Hipple - Direct

28

1 Q Okay.

2 (Pause in proceedings.)

3 Q Now, in addition, you've got other assets, physical  
4 assets, that you picked up, correct?

5 A Yes.

6 Q And one of them was a car?

7 A That is correct.

8 Q And you sold the car?

9 A No, I did not sell the car. Brian had to sell the  
10 car.

11 Q Okay. And do you know how much he got for the car?

12 A 8,000.

13 Q Okay. So if I add 8,000 to this, now I got  
14 254,000, correct?

15 A That's what the number says, but I'm in  
16 disagreement with it.

17 Q Okay. Understand. And this was part of the  
18 security for the \$210,000 note in your security  
19 agreement, correct?

20 A Yes, it was part -- the material was part of it,  
21 yes, but the numbers aren't correct.

22 Q I hear that and you will get your opportunity to  
23 establish that. Now, I'd like you to look at  
24 Plaintiff's Exhibit 137.

25 (Pause in proceedings.)

Mr. Hipple - Direct

29

1 A Mine is blank.

2 Q I'm sorry?

3 A Mine is blank.

4 Q No, that's the --

5 THE COURT: Mine is blank also.

6 MR. BERKOWITZ: I got one.

7 (Pause in proceedings.)

8 BY MR. BERKOWITZ:

9 Q Okay. I'm going to stand and share with you, Mr.  
10 Hipple.

11 A Well, I would like to see a copy of it.

12 Q Absolutely, here you go.

13 A I think the Judge should have a copy of it also.

14 Q You get the --

15 (Pause in proceedings.)

16 Q So take a look at that. Do you recall doing that  
17 Exhibit D-52? Oh, D-52. That's where it will be.

18 THE COURT: D-52?

19 MR. BERKOWITZ: D. Defense Exhibit 52.

20 THE WITNESS: Here, Your Honor.

21 THE COURT: I have a copy of it.

22 MR. BERKOWITZ: That's where it is.

23 THE COURT: Thank you. I have D-52.

24 MR. BERKOWITZ: Okay.

25 BY MR. BERKOWITZ:

Mr. Hipple - Direct

30

- 1 Q So let's look at D52.
- 2 A Well, I'm looking at this.
- 3 Q Yeah, but you can't have my notes.
- 4 A Okay.
- 5 Q Thank you.
- 6 A Okay.
- 7 Q You can look at D-52. Mr. Hipple, do you --
- 8 A Here?
- 9 Q Can you find D-52?
- 10 A Yes.
- 11 Q Okay. And you see that you list \$8,000 for the
- 12 sale of the car?
- 13 A That is correct.
- 14 Q And you list 16-ounce bottles. They have a price.
- 15 You see that USA?
- 16 A Hold on, what are we talking -- okay, go ahead.
- 17 Q The second --
- 18 A Finished prod --
- 19 Q -- to last line.
- 20 A Finished product or --
- 21 Q Second to last line, it says, "16" --
- 22 A "Ounce bottles."
- 23 Q -- "ounce bottles of Chemical USA" Do you --
- 24 A That is correct.
- 25 Q -- see that?

Mr. Hipple - Direct

31

1 A Yes, I see that.

2 Q And you have a price of 59.95 there.

3 A Right.

4 Q What is that price from?

5 A That's what it was being sold for.

6 Q By SCIX?

7 A By Steel Seal Pro.

8 Q Okay. So Steel Seal Pro then sold 5,196 bottles at  
9 59.95?

10 A Right.

11 Q Okay. So if I do the math, 59.95, it comes out to  
12 \$311,500. And, Mr. Hipple, on Exhibit 130 --

13 A Of yours, P?

14 Q Plaintiff's Exhibit 130, yes, the second page.

15 THE COURT: D-130 or P-130?

16 MR. BERKOWITZ: P, Plaintiff's --

17 THE COURT: All right.

18 MR. BERKOWITZ: -- 130. The one that has --

19 THE COURT: Right.

20 MR. BERKOWITZ: -- the 353 cases and the 80  
21 cases.

22 THE WITNESS: 130?

23 BY MR. BERKOWITZ:

24 Q Yes, 130.

25 A 130 is (inaudible) on mine.

Mr. Hipple - Direct

32

1 Q Oh, you've looked at it already?

2 THE COURT: This is the physical assets that  
3 I have taken?

4 MR. BERKOWITZ: Yes.

5 THE WITNESS: Hold on one second.

6 BY MR. BERKOWITZ:

7 Q Next page, "This is the physical assets I've  
8 taken."

9 A Okay.

10 Q And if you look at that, "Picked up in Colonial  
11 Chemical 353 cases" --

12 A Right.

13 Q -- "of 16-ounce" --

14 A Correct.

15 Q -- "and 80 cases of 16-ounce."

16 A Correct.

17 Q And you agree with me there's no designation of UK  
18 product or USA product on this?

19 A No.

20 Q There's no designation, right?

21 A Right, that is correct.

22 Q Okay. Now, on Exhibit D-2 --

23 A Hold on, I need to be writing this stuff down.

24 Q Defendant Exhibit 52. It's in the black binder.

25 A Well, my tablet --



Mr. Hipple - Direct

33

1 Q The one we just looked at.

2 (Pause in proceedings.)

3 Q I'm sorry, do you have it, Mr. Hipple?

4 A Well, I need to start writing these down. Okay.

5 Q Right here.

6 A I got to write all this stuff down because I

7 (inaudible) come back to it for this. Okay.

8 (Pause in proceedings.)

9 Q Now, you would agree with me that you placed no  
10 value on the assets -- on the assets that you took for  
11 patents, the secret formula, the trade name, the  
12 websites, the goodwill? There's no value on that, on  
13 your document?

14 A I think we have to address each thing one thing at  
15 a time.

16 Q All right. Just if you could follow me on my  
17 questions, Mr. Hipple.

18 A Okay.

19 Q On the value that you ascribe to the assets that  
20 you took of SCIX, you say in your affidavit, Exhibit  
21 25, paragraph 67, that the assets that I repossessed  
22 were sold for a total of \$110,000, correct?

23 A That is correct.

24 Q And your exhibit there has a total number of  
25 122,000, right, your Exhibit D?

Mr. Hipple - Direct

34

1 A All right. Within dollars.

2 Q Okay. Okay. And that does not include any value  
3 for patents, correct?

4 A I never received any patents.

5 Q Secret formula?

6 A That belonged to me.

7 Q Well, that's not what the other documents say, but  
8 we can argue with that and you can put on your case.  
9 But you didn't put a value on it, did you?

10 A No, because it belonged to me.

11 Q Okay. Trade names?

12 A Excuse me, it belonged to Scientific Chemical,  
13 Incorporated.

14 Q Well, we'll get there.

15 A Sure.

16 Q But you didn't put any value on these?

17 A It belonged to Scientific Chemical, Incorporated.

18 Q All right. All right, I hear you. So there's no  
19 value on these?

20 A It belonged to Scientific Chemical, Incorporated.

21 Q And you would agree with me, wouldn't you, that the  
22 name, Steel Seal, has a value, doesn't it?

23 A It belonged to Scientific Chemical, Incorporated.

24 Q The name, Steel Seal, has a value?

25 A It belongs to Scientific Chemical.

Mr. Hipple - Direct

35

1 Q That's not the question though. There's a value --

2 A I don't know --

3 Q -- to that name?

4 A -- what value it has.

5 Q It has a value though, right?

6 THE COURT: Well, the question is does it  
7 have any value? We will talk about what the value is  
8 later, but does it -- it has some value?

9 THE WITNESS: I'm sure -- I don't -- I'm sure  
10 it --

11 THE COURT: That's all he's trying to elicit.

12 THE WITNESS: -- has value, but I don't know  
13 what the value is.

14 THE COURT: Yes, right.

15 BY MR. BERKOWITZ:

16 Q And, in fact, you registered the trademark, didn't  
17 you?

18 A I actually did not register the trademark. Some --  
19 I believe Brian registered the trademark.

20 Q Well, someone registered --

21 A Or maybe --

22 Q -- a trademark, right?

23 A Maybe Teresa registered the trademark.

24 Q Okay, maybe Teresa registered it. But you would  
25 agree with me that there's value if there's a

Mr. Hipple - Direct

36

1 trademark?

2 A Yes.

3 MR. BERKOWITZ: Now, Your Honor, this was not  
4 produced as an exhibit. I'm using this for purposes of  
5 impeachment.

6 THE COURT: Okay.

7 BY MR. BERKOWITZ:

8 Q Mr. Hipple, I'm going to show you --

9 THE COURT: Why don't you mark it anyway, for  
10 identification purposes.

11 MR. BERKOWITZ: Yeah. Let me go to my last  
12 exhibit so I can distinguish it. 137.

13 THE COURT: Yes, P-137.

14 THE WITNESS: P-130?

15 MR. BERKOWITZ: I'm sorry?

16 (Pause in proceedings.)

17 MR. BERKOWITZ: Oh, I'm sorry.

18 THE COURT: This is a new exhibit. It's  
19 marked --

20 MR. BERKOWITZ: This is a new exhibit.

21 THE COURT: -- 138. It's not in your book.  
22 This is the trademark registration?

23 MR. BERKOWITZ: This is the trademark  
24 registration.

25 THE COURT: Right.

Mr. Hipple - Direct

37

1 THE WITNESS: So --

2 MR. BERKOWITZ: I'm going to mark it 200 so I  
3 don't overlap with any other numbers.

4 THE WITNESS: Okay, P-200.

5 BY MR. BERKOWITZ:

6 Q And I'm going to show this document to you, Mr.  
7 Hipple, and just take your time and look at it.

8 (Pause in proceedings.)

9 A Okay, I'm looking at it. I don't understand it,  
10 but I'm looking at it.

11 MR. BERKOWITZ: Your Honor, I do have some  
12 copies.

13 THE COURT: Okay.

14 MR. BERKOWITZ: I could provide one, this is  
15 P-200.

16 THE COURT: Right.

17 MR. BERKOWITZ: P-200.

18 BY MR. BERKOWITZ:

19 Q Do you see on the front page in big letters, "STEEL  
20 SEAL?"

21 A Yes.

22 Q And that's the product you told us just a couple of  
23 minutes ago is owned by --

24 A Scientific Chemical, Incorporated.

25 Q -- Scientific Chemical, Inc?

Mr. Hipple - Direct

38

1 A Uh-huh.

2 Q Now, let's turn to page two.

3 A Okay.

4 Q And let's look at the filing date, May 24, 2013.

5 Do you see that?

6 A Yes.

7 Q Sir, you would agree with me Brian Hipple didn't  
8 file this?

9 A I would agree with you that Brian Hipple didn't  
10 file it, but neither did I.

11 Q Okay. Let's look down at the owner.

12 A Okay.

13 Q Do you see that if you go down the left side? The  
14 owner of the name, Steel Seal, B.B.B. Management Group,  
15 LLC?

16 A Right.

17 Q Correct?

18 A Yep.

19 Q And that's your company?

20 A That is correct.

21 Q Okay. And there is an attorney, John Gibbons?

22 A Right.

23 Q Do you know Mr. Gibbons?

24 A No.

25 Q So, Mr. Gibbons filed this out of the blue --

Mr. Hipple - Direct

39

1 A I think it's --

2 Q -- for B.B.B. Management?

3 A I think they're filed automatically when a company  
4 changes.

5 Q Well --

6 A Same as the trademarks. I think all that stuff  
7 is -- when one thing changes everything changes. It's  
8 filed automatically.

9 Q You will agree with me that on this document filed  
10 with the United States Patent and Trademark Office, the  
11 owner of the Steel Seal logo --

12 A Right.

13 Q -- the name is B.B.B. Management Group, LLC?

14 A No, I believe that the own -- I believe, okay, that  
15 when B.B. -- well, first of all, that's not the date it  
16 was opened. I believe how it works is that the  
17 registration follows the company. Now, this was  
18 originally probably SCIX -- I mean Scientific Chemical.  
19 Do you have the previous one?

20 Q I'm showing you this document, Mr. Hipple. I got  
21 this off the internet --

22 A Okay.

23 Q -- from the United States Patent and Trademark  
24 Office.

25 A Okay.

Mr. Hipple - Direct

40

1 Q Okay?

2 A Right.

3 Q Now, if you look -- let's go to page one.

4 A Go ahead.

5 Q And let's look at if you see under the big word,

6 "Steel Seal," under goods and services --

7 A Yeah.

8 Q -- do you see, "First use?" Do you see that?

9 A Yes.

10 Q Correct? Do you see that?

11 A Under goods and services. Go ahead.

12 Q And you see, "First use?"

13 A Right.

14 Q "1999."

15 A Right.

16 Q "02-28."

17 A Right.

18 Q Okay. So that is 2-28 --

19 A February 28th, 1999.

20 Q Okay.

21 (Pause in proceedings.)

22 Q And if you look on Exhibit 37, Hipple --

23 A P or defendant?

24 Q -- 00441.

25 A P or defendant?



Mr. Hipple - Direct

41

1 Q Plaintiff.

2 A Plaintiff? 37?

3 Q Exhibit 37, page Hipple 441. We've looked at this  
4 before.

5 (Pause in proceedings.)

6 A Okay.

7 Q SCIX was formed on February 8th, 1999.

8 (Pause in proceedings.)

9 A Okay.

10 Q And you'll agree with me that B.B.B. Management  
11 didn't exist then?

12 A Yes, I agree with that.

13 (Pause in proceedings.)

14 A Okay. I'm going to have to slow down here.

15 THE WITNESS: I have a question for Your  
16 Honor, okay?

17 THE COURT: Sure.

18 THE WITNESS: All right. And all the stuff  
19 that he's saying I have to rebuttal is basically what  
20 has to take place, is that correct, because he's  
21 mentioned that it's SCIX, but he's not saying that  
22 Scientific Chemical was also opened that date.

23 THE COURT: As I told you yesterday, you  
24 don't have to rebut everything he says. You may decide  
25 to --

Mr. Hipple - Direct

42

1 THE WITNESS: I only have to rebut what he  
2 tries to get into evidence?

3 THE COURT: Well, you have to rebut things  
4 that you dispute. There may be things that he's  
5 bringing out that may be not be in dispute.

6 THE WITNESS: Well, when do I --

7 THE COURT: For example --

8 THE WITNESS: This is in dispute.

9 THE COURT: Well, okay. I don't know what  
10 facts you're talking about, but, for example, the fact  
11 that Steel Seal is subject to a trademark. That may  
12 not be in dispute.

13 THE WITNESS: Right.

14 THE COURT: For example, so that fact you  
15 wouldn't have to dispute. But if there's other facts  
16 that you dispute, yes, you should bring them out, and  
17 you can bring them out two ways.

18 As I told you yesterday, if your attorney was  
19 not discharged and your attorney was here, your  
20 attorney would ask you questions, right, to bring out  
21 facts that would rebut the things that Mr. Berkowitz is  
22 bringing out now. And I told you yesterday because you  
23 fired your attorney, after he's finished, you can bring  
24 out whatever you want to bring out to rebut. For  
25 example, if you have evidence to rebut a particular

Mr. Hipple - Direct

43

1 fact, you can state that and give the basis for your  
2 statement or -- and bring out documents to support it.

3 Let me just finish and then I'll -- and then  
4 you can follow up, okay? The other way you can rebut  
5 it is after he's finished his case, you could call your  
6 own witnesses, including yourself again, okay?

7 THE WITNESS: Okay.

8 THE COURT: So after he's finished, and I  
9 don't know when he's going to finish. Let's say it's,  
10 you know, tomorrow or Thursday. I'm not sure when he's  
11 finished. That's your chance to present your own case.  
12 So, for example, you could call yourself back to the  
13 stand --

14 THE WITNESS: Right.

15 THE COURT: -- okay, and bring out whatever  
16 points you want to bring out. You could call another  
17 witness, but, you know --

18 THE WITNESS: Okay.

19 THE COURT: -- I'm not saying who. You can  
20 call an attorney or you can call whoever you want to  
21 rebut those facts. So there's two ways you can do it.

22 THE WITNESS: Okay.

23 THE COURT: Either you could do it in the  
24 next hour or two through your own testimony or call  
25 your own -- you know, you can call your other

Mr. Hipple - Direct

44

1 witnesses.

2 THE WITNESS: Unfortunately, I have not been  
3 keeping track of the exhibits he's been showing, all  
4 right?

5 THE COURT: Right.

6 THE WITNESS: So that's been my mistake so  
7 far, all right? So, basically, I would have to go  
8 through every book and try to remember whether or not  
9 he spoke about that exhibit.

10 THE COURT: Yes. Or --

11 THE WITNESS: But as of right now --

12 THE COURT: Or --

13 THE WITNESS: -- I'm going to start keeping  
14 track of them.

15 THE COURT: Right. Or you can rely on your  
16 recollection of the facts that Mr. Berkowitz is trying  
17 to bring out and then try to rebut each one of those  
18 facts.

19 But I told you this. I told you this that  
20 you were not making a wise move in discharging your  
21 attorney, but that's water over the bridge, but I told  
22 you that.

23 THE WITNESS: Right.

24 THE COURT: It's very difficult, but you  
25 decided to do this. So yes, you should keep notes and

Mr. Hipple - Direct

45

1 try to keep notes so you can remember the things that  
2 you want to bring up either on your -- what we call  
3 your cross-examination of yourself --

4 THE WITNESS: Self, okay.

5 THE COURT: -- or later on in your case in  
6 chief, your own case. You can call yourself again --

7 THE WITNESS: Right.

8 THE COURT: -- or you can call other  
9 witnesses to rebut some of these facts, okay?

10 THE WITNESS: So, basically, I'll just start  
11 keeping track of every exhibit he talks about?

12 THE COURT: I think you should.

13 THE WITNESS: Okay.

14 THE COURT: But I -- you know, I'm the Judge  
15 here. I'm not your lawyer --

16 THE WITNESS: Right, right, okay.

17 THE COURT: -- so you do whatever you want.

18 THE WITNESS: Okay.

19 THE COURT: Okay.

20 THE WITNESS: Okay, thank you, Your Honor.

21 BY MR. BERKOWITZ:

22 Q Mr. Hipple, if you could turn in volume one to  
23 Plaintiff's Exhibit 10.

24 A P-10.

25 Q And that at the top says, "Security Agreement."

Mr. Hipple - Direct

46

1 (Pause in proceedings.)

2 Q Now, have you gotten to the exhibit?

3 A Yes, I'm there.

4 Q Now, we talked about this document I believe  
5 yesterday. This was what secured the \$210,000 note.  
6 And I don't recall whether we did it yesterday, but if  
7 you look at page 13, which is Hipple 033.

8 (Pause in proceedings.)

9 A P-10, page 13. Go ahead.

10 Q Do you see a signature there?

11 A Yes.

12 Q That appears to be your signature?

13 A Yes.

14 Q And the other signature?

15 A It appears to be Brian's.

16 Q Okay. And, Mr. Hipple, I'd like you to turn to  
17 page eight of this document.

18 A P-8?

19 Q Eight --

20 A Oh, page eight --

21 Q -- of this document.

22 A -- on the same document.

23 Q Actually, we're going to go -- we'll start at page  
24 eight.

25 A Okay, eight.

Mr. Hipple - Direct

47

1 (Pause in proceedings.)

2 A Go ahead.

3 Q Now, do you see paragraph seven?

4 A Right.

5 Q It says "proceeds." Do you see that?

6 A "Proceeds."

7 Q Okay, and it says, "Application of proceeds."

8 A Yes.

9 Q And it says, "The proceeds of the collateral shall  
10 be applied by the creditor in the following order  
11 unless a court of competent jurisdiction shall  
12 otherwise direct." Do you see that?

13 A I see it, but I don't understand it.

14 Q Okay. All right. No court of competent  
15 jurisdiction gave you any instructions with respect to  
16 this exhibit, did they?

17 A I don't understand it.

18 Q Okay. Let's go -- I'm going to tell you A, B, and  
19 C don't apply for purposes of this discussion.

20 A Okay. Where are we going now?

21 Q We're going to go to the next page, page nine,  
22 paragraph D. And I'm going to read this.

23 A Page?

24 Q Fourth. Do you see that?

25 A Paragraph four?

Mr. Hipple - Direct

48

1 Q It's at the top of the page.

2 A Okay. All right, right.

3 Q Fourth, "The balance, if any, after all of the  
4 obligations," which I'm going to tell you is the note  
5 that we've looked at, the \$210,000 note, "had been paid  
6 and satisfied in full shall be remitted to the account  
7 of the debtor," and I'm going to represent to you on  
8 this agreement the debtor is SCIX, "as the debtor shall  
9 direct." Do you understand what that means?

10 A No particularly.

11 Q What that means is that if the collateral that you  
12 foreclose on has a value in excess of the promissory  
13 note --

14 A Right.

15 Q -- the \$210,000 note --

16 A Right.

17 Q -- that money is supposed to be paid back to SCIX.

18 A Okay.

19 Q And you're supposed to return all the collateral  
20 because you've been paid in full.

21 A Right, okay.

22 THE COURT: Not all the collateral. You mean  
23 the remaining --

24 MR. BERKOWITZ: The remaining collateral --

25 THE COURT: Right.



Mr. Hipple - Direct

49

1 MR. BERKOWITZ: -- that has not been sold.

2 THE COURT: Right.

3 THE WITNESS: The money or the collateral?

4 BY MR. BERKOWITZ:

5 Q Collateral.

6 A So once I reach the limit of the 210, the  
7 remaining --

8 Q It all goes back to SCIX.

9 A Okay.

10 Q And you did not return anything to SCIX, did you?

11 A Well, I never got above 210.

12 Q Okay. I hear your testimony.

13 A But --

14 Q We can disagree on that.

15 A -- I didn't write down, in reference to paragraph  
16 eight --

17 Q We're talking about paragraph seven.

18 A No, I missed one thing. Hold on for one moment,  
19 okay? I wrote down 13. Under P-10, 13 you talked  
20 about, page 13. What did we talk about on page eight?  
21 Oh, 7.1?

22 Q We talked about --

23 A 7.1?

24 Q -- paragraph seven.

25 A 7.1? Okay. And on page 13 it was the signature,

Mr. Hipple - Direct

50

1 right? Okay. And then the other one was 90 -- okay,  
2 I'm up to date.

3 (Pause in proceedings.)

4 Q Mr. Hipple, I'm going to ask you to look at volume  
5 two, plaintiff's volume two.

6 A Go ahead.

7 Q Exhibit 39.

8 (Pause in proceedings.)

9 Q Have you found that, Mr. Hipple?

10 A Plaintiff's 39, yes.

11 Q Okay. It's volume two, Exhibit 39. Now, do you  
12 recall we talked about the license agreement between  
13 Complete Group and Steel Seal Pro? Do you recall  
14 discussions about that?

15 A Yes, correct.

16 Q And we talked about the fact that Brian Hipple was  
17 supposed to be paid \$10,000, correct?

18 A Correct.

19 Q Okay. Now, let's look at Exhibit 39. And I'd like  
20 you to -- do you see the first page, the -- it's --

21 A Yeah.

22 Q Do you see Steel Seal Pro, LLC?

23 A Yes.

24 Q And do you see at the top of the page, "The First  
25 National Bank?"

Mr. Hipple - Direct

51

1 A Yes.

2 Q Okay. And that's where Steel Seal Pro had its  
3 account, correct?

4 A Yes.

5 Q Okay. Now, let's look down at this exhibit.

6 (Pause in proceedings.)

7 Q I want you to go first to page 21, and we're going  
8 to start there.

9 A Okay, 39, page 21. Okay. 000021, go ahead.

10 Q And if you look at check number 123 --

11 A Right.

12 Q -- it has a payment to the U.S. Treasury.

13 A Right.

14 Q Now, it doesn't say that that's Brian's tax  
15 payment, but do you know he paid his taxes out of the  
16 Steel Seal Pro account?

17 A I can't determine --

18 Q Okay.

19 A -- what that payment is for.

20 Q Okay. Let's look across the page to check number  
21 137. Do you see that?

22 A Yes.

23 Q And it's made payable to Brian Hipple?

24 A Yes.

25 Q And the date of the check is February 1, 2011. Do

Mr. Hipple - Direct

52

1 you see that?

2 A Yes.

3 Q And the amount is \$3,500?

4 A Yes.

5 Q Okay. And let's look at the next check, check 138.

6 Does that look like Brian's signature on that check?

7 A I'm assuming it is.

8 Q Okay. And you see that's payable to Melissa

9 Moreno?

10 A Uh-huh.

11 Q And you know who Melissa is?

12 A Of course.

13 Q Okay. And that's for \$2,500?

14 A Yes.

15 Q And do you see the next payment? Brian drove a

16 Volvo, right?

17 A No.

18 Q He didn't? Okay

19 A He --

20 Q I'll tell you that Melissa said that he drove a

21 Volvo, but that's okay.

22 A Or wait a minute.

23 Q When I get to her --

24 A I guess --

25 Q -- I'll do that.

Mr. Hipple - Direct

53

1 A I guess maybe I'm not sure what he drove because he  
2 had an Infiniti. That was always in my mind, Infiniti.

3 Q Okay. Let's look at the next check, 141.

4 A Right.

5 Q And that's for \$9,000 to Melissa?

6 A Yes.

7 Q Do you see that?

8 A Uh-huh.

9 Q And do you see the next check is to Keystone Volvo  
10 for 2,498? But you're not sure that Brian had a Volvo.

11 A Well, I think maybe he did, yes.

12 Q Okay. Okay. Okay. Let's turn to the next page,  
13 00022. Do you see there's a payment for Brian, \$5,000?

14 A Can I object to this line of questioning because I  
15 don't -- I don't know what -- you know, these  
16 documents, I've never seen these documents.

17 THE COURT: Yes, Mr. Berkowitz, you have to  
18 lay a foundation that he has some familiarity with  
19 these documents, he prepared them, he reviewed them.

20 MR. BERKOWITZ: I've asked him to identify  
21 the signature of Brian on the check. I will use these  
22 with Melissa Moreno.

23 THE COURT: All right.

24 MR. BERKOWITZ: She will be able to --

25 THE COURT: So I'll sustain the objection.

Mr. Hipple - Direct

54

1 MR. BERKOWITZ: Okay.

2 BY MR. BERKOWITZ:

3 Q Mr. Hipple --

4 THE COURT: By the way, Mr. Hipple, you can  
5 -- again, you can object, okay? I mean, you know,  
6 you're acting your client of the attorney here. You  
7 can object. When you just said to me can I object, you  
8 can object to all, you know --

9 THE WITNESS: Okay.

10 THE COURT: -- reasonable --

11 THE WITNESS: I would --

12 THE COURT: -- based on the law and the  
13 evidence objections. But, I want to make it clear, you  
14 can object when you think you have to object.

15 THE WITNESS: Right, I'm going to object  
16 because, again --

17 THE COURT: You did and I --

18 THE WITNESS: -- I'm not familiar --

19 THE COURT: -- sustained your objection,  
20 which means that you --

21 THE WITNESS: Okay.

22 THE COURT: -- I agree with you.

23 MR. BERKOWITZ: Okay.

24 BY MR. BERKOWITZ:

25 Q Mr. Hipple, let's turn to page 00028.

Mr. Hipple - Direct

55

1 (Pause in proceedings.)

2 Q And then -- have you gotten to that?

3 A Yes.

4 Q Okay. Now let's look in the bottom left column.

5 Do you see it dated -- a check from Steel Seal Pro? Do  
6 you see that?

7 A What location?

8 Q It's the bottom column -- the bottom of the page on  
9 the left column.

10 THE COURT: And what is your question?

11 BY MR. BERKOWITZ:

12 Q Check number 158, do you see that? And that's a  
13 check made to A&C Building and Industrial Maintenance,  
14 correct?

15 A Yes.

16 Q Okay. And those are payments that were made to  
17 Complete Group through your company, A&C Building?

18 A Yes.

19 Q And you got these checks?

20 A Yeah. I'm sure I got the check because it's in the  
21 -- well, I don't know the verification of this  
22 document, but, again, I know I got money from them.

23 Q Okay. And you see that signature looks like  
24 Brian's?

25 THE WITNESS: I'm going to have to object

Mr. Hipple - Direct

56

1 again because, again, these are -- these are not my  
2 documents, okay?

3 THE COURT: No, they're not, but you did  
4 testify your company is AC Building and Industrial  
5 Maintenance, right?

6 THE WITNESS: Yes, all right. Well, then --

7 THE COURT: So I think that's a legitimate --

8 THE WITNESS: -- that one I can --

9 THE COURT: -- question to ask you whether  
10 you received that.

11 THE WITNESS: All right, yes.

12 MR. BERKOWITZ: Okay.

13 THE WITNESS: I don't remember receiving it,  
14 but yes, it's got my company name on it.

15 MR. BERKOWITZ: Okay.

16 BY MR. BERKOWITZ:

17 Q Mr. Hipple, I'm going to represent to you that in  
18 February of 2011, Brian Hipple and Melissa Moreno took  
19 \$24,788 out of Steel Seal Pro. Were you aware of that  
20 fact?

21 A No, I was not.

22 Q Okay. And under the agreement with you, they were  
23 only supposed to take \$10,000, correct?

24 A That is correct.

25 Q Okay. And in March of the same year I'm going to



Mr. Hipple - Direct

57

1 represent to you that they took out a total of \$28,870.

2 And, again, they were only allowed to take 10,000,  
3 correct, under the licensing agreement?

4 A Under the license agreement was 10,000.

5 Q And, as a matter of fact, I see that there were  
6 some additional payments. They actually took \$39,140  
7 out of Steel Seal Pro in the month of March 2011? And,  
8 again, that's above what the agreement provides for?

9 A Yes.

10 Q Okay. And you are also aware, aren't you, that  
11 there were American Express bills paid out of Steel  
12 Seal Pro?

13 A Yes.

14 Q Okay. And I'm going to ask you --

15 A When you say "aware"--

16 Q I'm going to ask you --

17 A -- what do you mean "aware"?

18 Q -- to look at Exhibit 61.

19 THE COURT: Well, wait a minute. He's asking  
20 for a clarification, Mr. Berkowitz.

21 MR. BERKOWITZ: I'm sorry.

22 THE COURT: He wants to know when you say the  
23 word "aware," what do you mean?

24 BY MR. BERKOWITZ:

25 Q I'm asking did you know it before I told you today?

Mr. Hipple - Direct

58

1 A That what?

2 Q That Brian and Melissa had taken out almost \$50,000  
3 in two months from Steel Seal Pro?

4 A No, I did not know.

5 Q Okay. Now, I'm going to ask you to look at Exhibit  
6 61 through 110.

7 A 61?

8 THE COURT: That's a new volume.

9 MR. BERKOWITZ: Yes.

10 THE WITNESS: Where are we at?

11 THE COURT: That's volume three. Does he  
12 have that, Mr. Berkowitz? Does Mr. Hipple have that  
13 volume? Okay.

14 BY MR. BERKOWITZ:

15 Q Have you got volume three yet, Mr. Hipple?

16 A What page?

17 Q Let's start with Exhibit 61. Here we go. I'm  
18 going to put those aside because we're going to be  
19 using this one for awhile. Do you want to pick those  
20 up so you have some room to work?

21 (Pause in proceedings.)

22 Q Mr. Hipple, I would like you to look -- turn to  
23 Exhibit 61.

24 A Right.

25 Q And do you see that -- do you know what this

Mr. Hipple - Direct

59

1 document is?

2 A No.

3 Q Well, if you look at the top -- and let me make  
4 sure we're looking at the same page.

5 (Pause in proceedings.)

6 MR. BERKOWITZ: There are copies of this in  
7 here, Your Honor.

8 THE COURT: Okay.

9 BY MR. BERKOWITZ:

10 Q Now, look -- I'm showing you the first page of  
11 Exhibit 61, do you see that, of an American Express  
12 account?

13 A Yes, I see it.

14 Q And would you read the name at the top of the  
15 account?

16 A Clement R. Hipple.

17 Q Okay. And under that?

18 A Scientific Chemicals.

19 Q Okay. And do you recall --

20 THE COURT: You said chemicals. You meant  
21 chemical, right?

22 THE WITNESS: Chemical, yeah. Take off the  
23 "s."

24 THE COURT: Right.

25 THE WITNESS: Scientific Chemical.

Mr. Hipple - Direct

60

1 BY MR. BERKOWITZ:

2 Q And let's look at the address on this document.

3 A Right.

4 Q Do you see that?

5 A Uh-huh.

6 Q And 73 Old Dublin Pike, was that the SCIX address  
7 at the time?

8 A Yes.

9 Q Okay. So this bill is dated 1-20-09. That's when  
10 SCIX was in business?

11 A 1-20-09? 1-20-09?

12 Q That's what the date of this bill is if you look at  
13 the top.

14 A I can't comment on anything about SCIX.

15 Q Okay. Because you don't know anything about it?

16 A Right.

17 Q Okay. But let's look at this document, all right?

18 THE WITNESS: I object.

19 BY MR. BERKOWITZ:

20 Q Let's look at this document.

21 THE WITNESS: I object.

22 THE COURT: All right.

23 MR. BERKOWITZ: Okay.

24 THE COURT: What do you object?

25 THE WITNESS: I object that I have no

Mr. Hipple - Direct

61

1 knowledge and this has nothing to do with me. I never  
2 seen this document.

3 THE COURT: You mean the American Express  
4 bill?

5 THE WITNESS: Right.

6 THE COURT: It is --

7 MR. BERKOWITZ: Your --

8 THE COURT: It is addressed to you thought.

9 THE WITNESS: It's not addressed to me, Your  
10 Honor.

11 THE COURT: You're not Clement R. Hipple?

12 THE WITNESS: Well, that's been since 1999,  
13 Your Honor. This American Express card has been  
14 ongoing since the business opened up in 1999.

15 MR. BERKOWITZ: Okay.

16 BY MR. BERKOWITZ:

17 Q And let's look there. It says, "Activity for  
18 Clement Hipple." Do you see that?

19 A Well --

20 Q Do you see that?

21 THE COURT: Where are you -- where are you  
22 pointing?

23 MR. BERKOWITZ: I'm on the first page --

24 THE COURT: Okay.

25 MR. BERKOWITZ: -- Your Honor.

Mr. Hipple - Direct

62

1 THE COURT: You have to show me what --

2 BY MR. BERKOWITZ:

3 Q Do you have the first page of the American Express  
4 bill that says --

5 THE COURT: It says, "Business card, Gold  
6 card" --

7 MR. BERKOWITZ: Correct.

8 THE COURT: -- "open" --

9 MR. BERKOWITZ: And then it's got -- yes.

10 THE COURT: -- "card member snapshot of  
11 Clement," is that where you are?

12 MR. BERKOWITZ: Yes.

13 THE COURT: Okay, I'm there.

14 BY MR. BERKOWITZ:

15 Q And you see there there's activity for Clement  
16 Hipple?

17 A Hold on a minute.

18 (Pause in proceedings.)

19 A That is not my card.

20 Q I'm just asking you to look at the document first,  
21 Mr. Hipple.

22 A I can't comment on it.

23 Q Well, it has your name on it. It's --

24 A Well, it has --

25 Q -- addressed to your --

Mr. Hipple - Direct

63

1 A -- my name on it --

2 Q -- company, Scientific Chemical.

3 A -- but I cannot comment on the use of this  
4 document.

5 Q But you'll agree with me that your name is there?

6 A Yes, of course I agree to that. It says it.

7 Q Okay. And it shows charges under your name?

8 THE COURT: I'm going to overrule the  
9 objection. There was an objection. I think the fact  
10 that it's addressed to you, I'll allow the question --

11 THE WITNESS: Okay.

12 THE COURT: -- just so the record is clear.  
13 Go ahead.

14 BY MR. BERKOWITZ:

15 Q Okay. And you see that there's charges under your  
16 name, right?

17 THE COURT: What page are you going to?

18 THE WITNESS: Where's my name?

19 MR. BERKOWITZ: I'm -- first --

20 THE COURT: Why don't you show him, Mr.

21 Berk --

22 MR. BERKOWITZ: I'm on page one.

23 THE COURT: All right, Mr. Berkowitz, why  
24 don't you just show him?

25 MR. BERKOWITZ: Yeah.

Mr. Hipple - Direct

64

1 THE COURT: Because I'm not sure what --

2 BY MR. BERKOWITZ:

3 Q If you look --

4 A No, it shows that there's charges here.

5 Q Due in full for activity. This is for Clement  
6 Hipple.

7 A Yeah, but --

8 MR. BERKOWITZ: Do you see that, Your Honor.

9 THE COURT: Right. So he got --

10 MR. BERKOWITZ: And then --

11 THE WITNESS: Let's look --

12 THE COURT: So he got --

13 MR. BERKOWITZ: -- he's got a charge there.

14 THE WITNESS: Let's look above that.

15 BY MR. BERKOWITZ:

16 Q No, no, we're going to -- we're going to -- you can  
17 look at whatever you want to --

18 A I'll --

19 Q -- when you get your chance.

20 A Afterwards. Okay.

21 Q Okay?

22 A All right.

23 Q Do you see that? It's got some activity.

24 A 61, right?

25 Q Yep.



Mr. Hipple - Direct

65

1 A 60, 61. Hold on, slow it down.

2 Q Yep.

3 A All right, first page. Go ahead.

4 Q And if you go two pages further, it's got -- again,  
5 it starts "Clement Hipple," okay?

6 A That's Clement Hipple as the cardholder.

7 Q No, this is activity for Clement Hipple. We'll go  
8 further in this.

9 A Well --

10 Q Okay?

11 A -- that's because the card was in my name.

12 Q Okay. So you're saying you didn't use this card?  
13 Is that your testimony?

14 A Of course not.

15 Q Okay. So you didn't use the card?

16 A No.

17 Q Okay. Let's go down -- if you're looking, it says,  
18 "Due in full activity for Brian Hipple." Do you see  
19 that?

20 A Where is that?

21 Q It's on the second -- there's a big page of small  
22 print, and it says at the top, "2 of 7." If you go to  
23 page 3 of 7, in small print on the top at the right it  
24 says, "3 of 7."

25 A Okay.

Mr. Hipple - Direct

66

1 Q Do you see that?

2 A No, I have 2 of 7, 4 of 7.

3 THE COURT: The next page. It's out of  
4 order.

5 THE WITNESS: Oh, okay, 3 of 7. Okay.

6 BY MR. BERKOWITZ:

7 Q Do you see that? There's a charge for you at  
8 Sunoco in Hamilton Township, New Jersey. Do you see  
9 that?

10 A Okay. I guess I have to wait until my turn. All  
11 right.

12 Q But you see that?

13 A I see what's going on here now.

14 THE COURT: Well, he's just asking a  
15 question.

16 THE WITNESS: Yeah, I -- yes, I see that.

17 BY MR. BERKOWITZ:

18 Q Okay. And now you see Brian Hipple is using the  
19 card?

20 A Hold on a minute. Page three? Now, where's it say  
21 Brian Hipple?

22 Q Do you see, "Due in full activity for Brian  
23 Hipple"?

24 A It says, "Due in full activity for Clement Hipple,  
25 \$108.47."

Mr. Hipple - Direct

67

1 Q Correct. And let's go down the next line.

2 A Okay.

3 Q Okay? "Due in full activity for Brian Hipple."

4 A Okay. All right.

5 Q Now, I haven't heard that Brian Hipple was involved  
6 with Scientific Chemical, was he?

7 A No, he wasn't involved with Scientific Chemical.

8 Q So he had no involvement with Scientific Chemical?

9 A That is correct.

10 Q None?

11 A So you're talking page 3 of 7.

12 Q Okay. I just want to make sure I understand this.  
13 Brian -- Brian had no involvement with Scientific  
14 Chemical?

15 A Uh-huh.

16 Q But his -- there's charge activity under his name?

17 A That's what it say.

18 Q Okay.

19 MR. BERKOWITZ: Your Honor, if I could have a  
20 minute?

21 THE COURT: Sure.

22 MR. BERKOWITZ: I'd like to --

23 THE COURT: Yes.

24 (Pause in proceedings.)

25 MR. BERKOWITZ: Your Honor, if I just could

Mr. Hipple - Direct

68

1 have a second? I have a lot of pieces of paper and I  
2 think it's important to get to this one.

3 THE COURT: Let's take a ten-minute break.

4 MR. BERKOWITZ: All right.

5 THE COURT: Okay? I'll see you in ten  
6 minutes.

7 THE WITNESS: Okay, thank you, Your Honor.

8 (Recess, 10:42 a.m. to 10:53 a.m.)

9 THE COURT: Mr. Hipple?

10 MR. BERKOWITZ: I broke down and took off my  
11 jacket.

12 THE COURT: I don't blame you.

13 BY MR. BERKOWITZ:

14 Q Mr. Hipple --

15 MR. BERKOWITZ: Oh, I'm sorry. Are we ready?

16 THE COURT: Go ahead. Yes.

17 BY MR. BERKOWITZ:

18 Q Mr. Hipple, before the break I asked you if Brian  
19 Hipple had anything to do with Scientific Chemical,  
20 Inc., and I think you told me no, he didn't?

21 A That is correct.

22 Q Okay. He had nothing to do with it?

23 A Right.

24 Q Now --

25 A Scientific Chemical, Inc., didn't --

Mr. Hipple - Direct

69

1 Q Sci --

2 A -- do anything.

3 Q He had nothing to do with it?

4 A Right, because the corporation didn't do anything.

5 Q Okay. Now, I would like you to turn in volume one  
6 to Plaintiff's Exhibit Number 22.

7 A 22? Okay.

8 Q And I would like you to turn to page -- on the  
9 bottom it's marked 33. And let me see --

10 A 33.

11 Q -- if these are in order. I hope they are. No,  
12 they're not.

13 A There's 20.

14 Q No, they're not.

15 A Start at 58.

16 Q Now, let me help you find that.

17 A No, I can find 33. I got it. Okay.

18 Q Black letters on the bottom. And I would like you  
19 to look at that.

20 A Yes.

21 Q Now, do you see it says "Steel Seal"?

22 A Yes.

23 Q Okay. And I want you to look down at -- it says  
24 "Important." Do you see that?

25 A "Important?" No.

Mr. Hipple - Direct

70

1 Q Do you see where it says -- under the label it says  
2 "Important." Do you see those words?

3 A Oh, down the bottom the page --

4 Q In block print --

5 A At the bottom --

6 Q -- at the bottom?

7 A -- of the page.

8 Q And it says "Customer," do you see that on the  
9 left?

10 A Wait, no. It says, "Important. Please check."

11 Q Let's go down a few lines. You'll see "Ticket  
12 number."

13 A "Ticket number." Go ahead.

14 Q And then it says "Customer"?

15 A "Customer."

16 Q And then you see it says "Scientific Chemicals,  
17 Inc."?

18 A Yes.

19 Q And if you look to the right, "Authorized  
20 signature." Do you recognize that signature as Brian  
21 Hipple?

22 A That one's a little funny, but go ahead.

23 Q Does that look --

24 A I don't recognize it.

25 Q -- like Brian's --

Mr. Hipple - Direct

71

1 A I'm sorry, that one don't --

2 Q Okay. You --

3 A -- doesn't quite look like his.

4 Q Okay. Let's look at page 34, the next page. It  
5 should be the next page. And, again, under the  
6 "Important" banner, "Scientific Chemicals, Inc.," do  
7 you see that?

8 A I'm sorry? Go again.

9 Q Do you see it says "Scientific Chemicals, Inc.?"

10 A Under?

11 Q Under the "Important" banner --

12 A Right, Scientific --

13 Q -- on the left side?

14 A Yeah, "Customer," right.

15 Q And there's a signature?

16 A Right.

17 Q It's not your signature?

18 A Right.

19 Q Okay. And I think you just told us you're the only  
20 one that had anything to do with Scientific Chemicals,  
21 Inc.?

22 A That is correct.

23 Q Okay. But that's not your signature?

24 A No, and I can't

25 Q Okay.

Mr. Hipple - Direct

72

1 A -- verify this document because it's not my --

2 Q Okay.

3 A -- signature.

4 Q Thank you. Mr. Hipple --

5 A Hold on for a minute, please.

6 Q Yep.

7 A 22, page 33 and 20. 22, page 33.

8 (Pause in proceedings.)

9 A Okay.

10 Q Mr. Hipple, we looked at Exhibit 61 and you said  
11 you had nothing to do with that, those charges?

12 A I had the -- was that the American Express charges?

13 Q The American Express charges.

14 A What was my statement in reference to that?

15 Q I think you said you didn't recognize the account  
16 and you don't recognize making --

17 A No, I --

18 Q -- any charges?

19 A I didn't say that. I said it's the American  
20 Express bill. I said I didn't recognize the charges.

21 Q Okay. You don't recognize the charges under your  
22 name?

23 A Right.

24 Q Okay. Would it be fair to say that you didn't pay  
25 the bill then?



Mr. Hipple - Direct

73

1 A I got to watch how I answer certain questions.

2 Yes, it would be fair to say I did not pay the bill.

3 Q Okay. Now, this entire binder --

4 A Right.

5 Q -- is filled with American Express bills.

6 A Yeah, a lot of work.

7 Q And if you would like to look through them and  
8 satisfy yourself that they're the same, American  
9 Express bills, just like the first one, has Clement  
10 Hipple and Brian Hipple charges, please do that, and I  
11 would like you to tell me whether you made any of these  
12 charges or not.

13 A I'm sorry? What was the last -- just the last part  
14 of your question.

15 Q You just -- you said you didn't make any of the  
16 charges on the first bill?

17 A Well, wait a minute. Let me -- let me just take a  
18 look at that because I don't want to have a problem  
19 later on when I question myself. Let me see something  
20 here for one minute. Give me one minute, please.

21 (Pause in proceedings.)

22 A I don't know what happened to it.

23 (Pause in proceedings.)

24 A Are these out of order? Oh, yeah, you're out of  
25 order again. Okay. Hold on for one minute. Let me

Mr. Hipple - Direct

74

1 put the pages in order.

2 Q Sure, put them in order.

3 A Okay. That's why I was getting confused, 3 of 7, 4  
4 of 7, 5 of 7, okay. Okay.

5 (Pause in proceedings.)

6 A 2 of 7 and 1 of 7. Okay. Yes, if you go to page  
7 -- the beginning page --

8 Q Exhibit 61?

9 A Yeah, of the American Express bill, if you go to  
10 the beginning page of the American Express bill, okay,  
11 and if you read down under "Card member snapshot" --

12 Q I'm sorry, where is that?

13 A It's about quarter the way of the page, "Card  
14 member" -- "Card member snapshot."

15 Q Yep.

16 A Okay? And then you'll see "Clement R. Hipple" and  
17 then you'll see "Brian Hipple."

18 Q Right.

19 A And then if you go across, you'll see card number  
20 51009 ending --

21 Q Okay.

22 A -- which is my card, okay? Then you'll see 56016  
23 is the card Brian used.

24 Q Okay.

25 A And if you follow it over a little further, you'll

Mr. Hipple - Direct

75

1 see -- yes. I have to answer yes to your question. I  
2 charged \$145.18.

3 Q Okay.

4 A Yes.

5 Q And do you recall paying this bill or would this  
6 come as a bill to Brian and his business?

7 A I could have -- I could have paid it with Brian.  
8 Brian was -- I did pay a lot of my own American Express  
9 bills.

10 Q Okay.

11 A Yes.

12 Q Okay.

13 A No, I didn't pay a lot. I paid them all.

14 Q Oh, okay.

15 A All my charges that were on American Express I  
16 paid.

17 Q Okay. So when we go through the bank records we  
18 won't see any records of these charges being paid from  
19 you?

20 A No, I paid them back to Brian or something. I  
21 don't remember how.

22 Q Oh, so you paid them back to Brian?

23 A Right.

24 Q So we won't see your checks? We'll see you paid it  
25 to Brian separately?

Mr. Hipple - Direct

76

1 A I think so, yes.

2 Q Okay. And how did you pay him?

3 A I don't -- I -- I'm not sure.

4 Q Did you write a check?

5 A You're going back to what, 2009?

6 Q Yeah, I'm asking did you -- did you write a check  
7 to him?

8 A I don't know. I'm not certain.

9 Q Well, you told us --

10 A I may have let them gang up and then write him a  
11 check for them --

12 Q Okay, well --

13 A -- because they were minimal charges.

14 Q Okay. And you told us you didn't have a personal  
15 checking account, so who would you write the check  
16 from?

17 A Probably A&C.

18 Q A&C, okay. Mr. Hipple, let's -- so there are  
19 charges for you?

20 MR. BERKOWITZ: And we can go through them  
21 all, Your Honor?

22 THE WITNESS: That's not necessary.

23 BY MR. BERKOWITZ:

24 Q I'm going to represent to you then, Mr. Hipple,  
25 that there are charges for you, and I'm going to

Mr. Hipple - Direct

77

1 represent to you paid by SCIX, for \$25,733.52 for the  
2 period of January 20th, 2009, through 9-21-2010.

3 A For one-year?

4 Q Yes, 25,000.

5 A Okay. Then maybe we need to go through it.

6 Q Okay, sure. Let's go to 62.

7 A Okay. Okay, 62, 877.

8 Q Okay. Let's go to 63.

9 A 1,178.44.

10 Q And 64.

11 A 2,125.

12 Q Okay.

13 A 859.

14 Q Yep.

15 A Right. 510.30. 1,639.

16 Q Exhibit 68?

17 A 77.27.

18 Q Exhibit 69?

19 A 1,339.

20 Q Exhibit 70?

21 A Okay, that's far enough. Are we good here yet?

22 Q I'm going to -- I'm going to go through them all if  
23 you want.

24 A No, that's far enough.

25 Q Okay.

Mr. Hipple - Direct

78

1 A I'm -- and I'm telling you I paid them.

2 Q Okay.

3 A I always paid my American Express charges.

4 Q You didn't pay it to American Express though, you  
5 paid it to Brian?

6 A No, because Brian paid the whole bill.

7 Q Okay. So, Brian paid the whole bill out of the  
8 business?

9 A Out of SCIX?

10 Q Yeah.

11 A Yes.

12 Q Okay. Then it's your testimony that you paid Brian  
13 back?

14 A Yes.

15 Q Okay. I'm going to represent to you, Mr. Hipple,  
16 that between -- from January 1 -- January 20th, 2009,  
17 to November 21st, 2012 --

18 A What was the second date?

19 Q November 21, 2012.

20 A All right.

21 Q SCIX paid a total of 32 -- of \$96,137.05 of  
22 American Express bills for you?

23 A Okay.

24 Q Okay? And you're telling us you repaid those to  
25 Brian?

Mr. Hipple - Direct

79

1 A I always paid my American Express bills.

2 Q Okay. So -- but you repaid it to Brian, not back  
3 to the company?

4 A Right.

5 Q Okay. And so that's a period of about three years?

6 A Three years.

7 Q 2009. So about \$32,000 a year of American Express  
8 payments?

9 A Yeah. During that time period, yeah, about.

10 Q Okay.

11 A Probably Teresa and I expenses.

12 Q Okay. Thank you, Mr. Hipple. That made it much  
13 faster. Now, we can put this exhibit away --

14 A Okay.

15 Q -- Mr. Hipple because this is all the American  
16 Express bills. Do you need some room there?

17 A No, I'm good.

18 Q Do you want me to move some of those for you?

19 A I'm good.

20 (Pause in proceedings.)

21 Q I'm going to ask you to look at Exhibit 39 now, and  
22 that is in volume number two.

23 A P-39?

24 (Pause in proceedings.)

25 Q Mr. Hipple, I just want to clarify something. We

Mr. Hipple - Direct

80

1 talked about the American Express bills, 2009, 2010,  
2 2011?

3 A Correct.

4 Q You signed your --

5 A 2012.

6 Q 2009, '10, and '11.

7 A Oh, '11, okay.

8 Q Yeah. So that couldn't be Teresa Hipple, all of  
9 those, because you were separated by then, weren't you?

10 A No, no, no, I didn't say -- I said some of them  
11 could have been.

12 Q Okay. Some of them.

13 A Me and Teresa, not just Teresa.

14 Q Okay. Now, Mr. Hipple, I would like you to look --  
15 let's look at Exhibit 39 and page 28, and I hope these  
16 are in order.

17 A All right, I'm there.

18 Q You see page 28?

19 A Uh-huh.

20 Q And we see the 3-2-11, payment to A&C Building  
21 Industrial Maintenance?

22 A I thought we just went over that.

23 Q Yeah. And, again, I'm going to represent to you  
24 that there are a lot of these checks. And you'll agree  
25 there are a lot of payments made to A&C?



Mr. Hipple - Direct

81

1 A Well, it depends on your interpretation of a lot.

2 Q Okay. We can go through them if you want.

3 A No, I don't need to.

4 Q Okay. Well, let me tell you I can -- I'll read off  
5 the page numbers for you and we can just skip through  
6 the pages and show the A&C payments. But I just want  
7 to make sure I understand this. Those were really  
8 payments intended for Complete Group?

9 A Paid to A&C.

10 Q Correct. So the Complete Group payments were made  
11 to A&C?

12 A Right.

13 Q Okay. And that came out of Steel Seal Pro?

14 A At what date are you talking?

15 Q Well, we are looking at --

16 A Okay, yeah.

17 Q -- on --

18 A Yeah.

19 Q -- 3-2-11.

20 A Right.

21 Q Okay?

22 A That's correct.

23 Q And we got a check on that page for \$9,000 --

24 A Uh-huh.

25 Q -- correct?

Mr. Hipple - Direct

82

1 A Yes.

2 Q Correct? Okay. Let's go to page 37.

3 A All right.

4 (Pause in proceedings.)

5 Q And you see the second check from the top on the  
6 left?

7 A Hold on. Hold on. What was the first page again?

8 Q The first page was 28. This is page 37.

9 A And this is Exhibit 39.

10 Q Exhibit 39. These are all in Exhibit 39.

11 A 38? 37? And now we're at what?

12 Q Page 37. Do you see the second check from the top  
13 on the left?

14 A Yes.

15 Q To A&C?

16 A Right.

17 Q And do you recognize that signature?

18 A Well, it's on his bank account, so I guess it's his  
19 signature.

20 Q Brian?

21 A Yes.

22 Q Okay.

23 A But what was the first page?

24 Q The first page was 28.

25 A 28. Okay.

Mr. Hipple - Direct

83

1 Q And you can -- they're all in this exhibit. Page  
2 37, we just looked at that. If you go to page 38 --

3 A Right.

4 Q -- you'll see there's a check above that to Brian.  
5 There's three -- there's four checks listed on this  
6 page, correct?

7 A Okay, yeah.

8 Q Okay. And you see Brian's?

9 A Uh-huh.

10 Q And that signature, do you see that? It looks like  
11 Brian's signature on his check?

12 A Yep.

13 Q And the Steel Seal Pro bank account, do you see the  
14 name there?

15 A Yep.

16 Q And at the top of the page, First National Bank?

17 A Right.

18 Q Okay. And that's where they did their banking,  
19 right?

20 A Yes.

21 Q Because that's where you garnished the money,  
22 correct?

23 A That's correct.

24 Q Okay. And then we see A&C, a check for \$9,000?

25 A Right.

Mr. Hipple - Direct

84

1 Q Do you see that?

2 A Yes, correct.

3 Q Now, Mr. Hipple, let me read off some page numbers,  
4 if we could save some time. Let me give you the page  
5 numbers and write these down.

6 A Go ahead.

7 Q Okay. Page 44.

8 A In the same exhibit?

9 Q All Exhibit 39.

10 A Page 44.

11 Q Check for 5,000. Page 44, another check for --

12 A Just give me the page numbers.

13 Q -- 9,000.

14 A Page what?

15 Q These are still page 40 -- two checks on page 44.

16 A Go ahead.

17 Q 5,000 and 9,000.

18 A All right.

19 Q Page 55, check for 9,000.

20 A Uh-huh.

21 Q Page 61, check for 7,000.

22 A Uh-huh.

23 Q Page 69, a check for 9,000.

24 A Uh-huh.

25 Q Page 71, a check for 5,000.

Mr. Hipple - Direct

85

1 A Uh-huh.

2 Q Page 77, a check for 9,000.

3 A Uh-huh.

4 Q And let's go to page 77.

5 (Pause in proceedings.)

6 Q Okay. Do you see there are actually two checks on  
7 that page?

8 A What, paid to A&C?

9 Q 77, A&C, there's a check for 7,000 and actually a  
10 check for 7,500.

11 A Well, no, the top one is for 9,000.

12 Q Correct, the top one is for 9,000 and the second  
13 one is for 7,500.

14 A Okay.

15 Q Okay?

16 A Yes.

17 Q Sir, that's how you got paid by Complete Group --  
18 for Complete Group?

19 A That's how Complete Group got paid, not me, yes.

20 Q Okay. Now, Mr. Hipple, I would like you to go to  
21 page 25.

22 A You mean Exhibit 25 or page 25?

23 Q No, page 25 in this exhibit.

24 (Pause in proceedings.)

25 A Okay.

Mr. Hipple - Direct

86

1 Q And I would like you -- do you see -- do you  
2 recognize what this paper is?

3 A Well, I understand it's a bank statement.

4 Q Okay.

5 A I'm not --

6 Q I would like you to look down to the bottom of the  
7 second paragraph.

8 A Okay. To the bottom of the second paragraph. Go  
9 ahead.

10 Q Do you see that? It says a wire transfer from  
11 Clement Hipple.

12 A Okay.

13 Q Do you see that?

14 A Wait one minute.

15 (Pause in proceedings.)

16 A Can you show me?

17 Q I'm sorry. Are you on page 26?

18 A No, you said 25.

19 Q Do you see that right there?

20 A To Clement Hipple or from?

21 Q Well, it says, "Wire transfer from Clement Hipple."

22 A Okay. And the amount -- the request was 7,945. Is  
23 that the amount on there?

24 Q Yes, that's the amount there.

25 A Okay, it's a credit. So go ahead.

Mr. Hipple - Direct

87

1 Q Okay.

2 A Yes.

3 Q So you're familiar with the bank account? It looks  
4 like you wired money into it, correct?

5 A Well, apparently there, I did.

6 Q Yeah, okay.

7 A Well, that's what it's saying, yes.

8 Q Now --

9 A I'm not familiar with this, but the paper says it,  
10 but I don't recognize it.

11 Q Now, let's --

12 A Or I don't remember it.

13 Q Okay. Let's go -

14 A Hold on. Hold on.

15 Q -- to page 19.

16 A Hold on.

17 Q Take your time.

18 (Pause in proceedings.)

19 Q Page 19.

20 (Pause in proceedings.)

21 A Go ahead.

22 Q And I would like you to look at the bottom of the  
23 first paragraph.

24 A Wire transfers?

25 Q Debit plus fee pay royalties.

Mr. Hipple - Direct

88

1 A Right.

2 Q So that would have been paid to you, right? You  
3 got paid the royalties? You told us that --

4 A Yes.

5 Q -- yesterday.

6 A I guess that's what it is, yes.

7 Q Okay. So it looks like you got a debit card for  
8 that?

9 A Wire transfer -- I'm sorry, I don't understand  
10 the -- and this is not my bank account, so I can't -- I  
11 can't verify anything.

12 Q Okay.

13 A You're asking me to verify a bank account that is  
14 not mine.

15 Q I'm just asking you a question.

16 A Therefore, I object.

17 THE COURT: I'll overrule the objection.  
18 He's just asking you if you --

19 THE WITNESS: If I what?

20 THE COURT: Well, he's asking you did you  
21 receive this wire transfer --

22 THE WITNESS: I don't remember.

23 THE COURT: -- through a debit card?

24 THE WITNESS: I don't know.

25 THE COURT: And you answered you don't know,



Mr. Hipple - Direct

89

1 right?

2 THE WITNESS: I don't know.

3 THE COURT: All right.

4 BY MR. BERKOWITZ:

5 Q Now, you did tell us yesterday though that you got  
6 the royalties?

7 A Of course.

8 Q Okay. So if we turn to page --

9 A This was page what, 19?

10 Q -- 87.

11 A Hold on.

12 (Pause in proceedings.)

13 A 87?

14 Q Yep.

15 (Pause in proceedings.)

16 A Go ahead.

17 Q Okay. And you see there's another -- it says "pay  
18 royalties?"

19 A Again, same thing, I don't understand, I don't know  
20 it.

21 Q Okay. But I -- just -- I understand you're limited  
22 with these accounts, but you did tell us you got the  
23 royalties, you're the one who would receive the  
24 royalties?

25 A Yes, I told you that and that is true.

Mr. Hipple - Direct

90

1 Q Okay.

2 A Page 87?

3 (Pause in proceedings.)

4 Q And do you recall during your deposition I asked  
5 you a question? And I'm going to let you -- do you  
6 have your deposition transcript up there, sir?

7 A No, I don't think so.

8 Q Let me get that for you.

9 A Okay.

10 (Pause in proceedings.)

11 A Oh, wait a minute. There it is.

12 Q Oh, there it is. Okay, good.

13 A Are we done with this big one, the other one, or  
14 no?

15 Q No, let's just hold on.

16 A I thought maybe we were done with this one.

17 (Pause in proceedings.)

18 A Okay.

19 Q Now, I want you to turn to page 83 --

20 A One moment.

21 Q -- of your deposition.

22 (Pause in proceedings.)

23 A Page what?

24 Q 83.

25 A 83.

Mr. Hipple - Direct

91

1 Q Okay, do you see that?

2 A Nope, not yet. Okay, I'm at 83.

3 Q All right, I want you to go to line seven. I'm  
4 going to ask you a question.

5 A Okay.

6 Q And it says -- "Okay. Now, I may have asked this.  
7 Are there any employees of Complete Group?" Answer,  
8 "No."

9 A No.

10 Q Question, "Okay." Answer, "A, me," and I think  
11 you're referring to you?

12 A Well, I wasn't an employee. I was a member.

13 Q Well, it says "me" when I asked if there --

14 A Okay, well --

15 Q -- were employees.

16 A -- me, meaning me as a member --

17 Q Okay.

18 A -- of Complete Group. I wasn't an employee.

19 Q Okay. Line 12, "Okay. You're the sole employee of  
20 Complete Group?" Answer, "Yes." Next question, line  
21 15 --

22 A No, hold on, that's not correct. There was two  
23 members of Complete Group, myself and Emily Domices.

24 Q Okay. Well, you answered -- when I asked you the  
25 question you said --

Mr. Hipple - Direct

92

1 A Well, I must have not --

2 Q -- you were the only one.

3 A -- understand the question. I'm saying right now  
4 that there were two members that you are aware of of  
5 Complete Group, myself and Emily Domices.

6 Q Okay.

7 A So I made a mistake there.

8 Q All right. Now, line 15, "Okay. How do you get  
9 paid by Complete Group?" Answer, "Debit card."

10 A Correct.

11 Q Correct? Question, "So you buy things on a debit  
12 card?" Answer, "No, excuse me. You asked how I got  
13 paid." Answer, "Yep." Question, "Yes." Answer, "No,  
14 I buy -- I pay cash on the debit card."

15 A What line are you again?

16 Q I'm at line 20 now.

17 A All right. "No, I buy -- I take cash on the debit  
18 card."

19 Q So you --

20 A Of Complete Group, right, we're talking about?

21 Q Right. Right. So that's how you get your money  
22 out of Complete Group?

23 A Well, it wasn't really Complete Group because  
24 Complete Group didn't have money.

25 Q Well, I asked you these questions and --

Mr. Hipple - Direct

93

1 A Yeah, but, again --

2 Q -- I'm just reading what we --

3 A We -- I thought we had an understanding that the  
4 money went to A&C.

5 Q So you took the money out of A&C on a debit card?

6 A Debit card, yeah, because Complete Group didn't  
7 have a bank account.

8 Q Okay. Right, it didn't --

9 A You knew that.

10 Q -- have a bank account until October 2012?

11 A Oh, I think 2000 -- early part of 2013.

12 Q Well, it doesn't look like Complete Group really  
13 needed a bank account, did it?

14 A Well, it was unable to get it because it was not a  
15 U.S. corporation and they have laws here in the U.S.

16 Q You're familiar with the fact that Brian's company,  
17 Steel Seal Pro, was a Nevis company?

18 A I'm not certain about that.

19 Q Okay. All right. Mr. Hipple, I hate to go here,  
20 but I would like to deal with your son's death on  
21 September 30th, 2012.

22 A What -- where are you at? What question?

23 Q I'm not on an exhibit now.

24 A You're what?

25 Q I am not on an exhibit right now.

Mr. Hipple - Direct

94

1 A Okay, hold on. Let me do this. Let me -- give me  
2 one --

3 Q Sure.

4 A Give me one minute. In reference to the  
5 deposition, you were talking about line -- can you give  
6 them to me quick because I'm answering them and I keep  
7 forgetting to write down the information? What were we  
8 talking about under my deposition, what lines?

9 Q It was all from page 83 of your deposition. You  
10 can --

11 A On about --

12 Q -- cite the whole page.

13 A -- 14 down or 15 down?

14 Q I believe I started at line seven.

15 A 83. Okay. Line seven.

16 Q And Brian died on September 30th, 2012?

17 A I'm sorry? Give me the -- I was doing something.

18 Q I'm sorry, did you --

19 A Go ahead.

20 Q Okay. Brian died on September 30, 2012?

21 A That is correct.

22 Q Okay. Now, Mr. Hipple, do you have Exhibit book 2?

23 A Yep, I got all four.

24 Q Okay. Let's -- let's see if we can find it.

25 (Pause in proceedings.)

Mr. Hipple - Direct

95

1 Q Okay. And I would like you to turn to Exhibit 49.

2 A 49. Okay.

3 (Pause in proceedings.)

4 Q Do you see that?

5 A Yes, I see it.

6 Q And you're familiar with that check? It's Steel  
7 Seal Pro made payable to A&C Building and --

8 A Yes, I'm --

9 Q -- Industrial Maintenance?

10 A -- very, very familiar with this check.

11 Q Okay. And you wrote the check out?

12 A That is correct.

13 Q That's your handwriting?

14 A That is correct.

15 Q Okay. And you affixed Brian's signature stamp --

16 A No, I did not. I had an agreement with Brian  
17 because Brian was a little problem child, that he would  
18 leave a check signed for me in case something happened  
19 to him, okay?

20 So after his death, I wrote this check. And  
21 if I was trying not to forge the check or whatever, I  
22 would have typed it in and not put it in my  
23 handwriting. So there's no forgery here. There's  
24 no -- nothing illegal, okay?

25 And I know where you're going with this, but,

Mr. Hipple - Direct

96

1 again, I had an agreement with Brian, okay? I had  
2 power of attorney with Brian, by the way, and we both  
3 had power of attorney with each other, okay? But I  
4 didn't find out until Saturday that power of attorney  
5 is no longer when somebody dies. Power of attorney  
6 stops. I thought power of attorney continued on, okay?

7 Q Okay.

8 A So Brian was to leave me one -- well, actually, a  
9 couple signed checks, okay? If anything happened, if  
10 he became incapacitated or whatever, I could go in and  
11 write in the check.

12 Q Okay.

13 A So that's --

14 Q You said Brian --

15 A -- what I did.

16 Q -- stamped --

17 A Because if I was trying to hide something, I would  
18 have typed this.

19 Q Right, because that's your handwriting?

20 A That's my handwriting, sure.

21 Q Right. And you said Brian stamped this, not you?

22 A Brian stamped it, yeah. It was in his house.

23 Q Let's turn to page 143 in your deposition.

24 A Okay. What's the date of my deposition?

25 Q Your deposition was on May 1st, 2013.



Mr. Hipple - Direct

97

1 A Okay, hold on. Let me catch up, okay? You got to  
2 remember I'm playing two roles here, all right? You're  
3 flying along. 49. P-49.

4 THE COURT: Mr. Berkowitz, I don't need that,  
5 but do I have a copy -- did you give me a copy of the  
6 deposition?

7 MR. BERKOWITZ: I don't know, but --

8 THE COURT: No, it's okay. I don't really  
9 need it, but yes.

10 MR. BERKOWITZ: It is in the defendant's  
11 exhibit book.

12 THE COURT: Oh, it is?

13 MR. BERKOWITZ: It's listed as a defendant  
14 exhibit.

15 THE COURT: Okay.

16 MR. BERKOWITZ: But we saw yesterday that  
17 some of those exhibits might be missing.

18 THE COURT: Okay. It's in the def --

19 THE WITNESS: Okay, what page are we having?

20 BY MR. BERKOWITZ:

21 Q I want you to look starting with page 142.

22 (Pause in proceedings.)

23 A All right.

24 Q Okay?

25 A No, no. Hold on. Page 142. Okay, go ahead, I'm

Mr. Hipple - Direct

98

1 there.

2 Q Okay. And I'm going to start on line 17.

3 A 17.

4 Q And I'm going to read it to you, and just let me  
5 know if I go too fast.

6 A Okay.

7 Q Question, "Did you have a signature stamp for  
8 Brian's signature?"

9 A I didn't have it. There was a Brian -- yes, I did.  
10 Okay, yeah.

11 Q All right, did I read it correctly?

12 A Yes, you read it correctly.

13 Q Okay.

14 A And I answered, "Yes, I did," but there was a  
15 signature stamp that Brian had, yes.

16 Q Okay. I'm just reading your deposition testimony,  
17 Mr. Hipple.

18 A Okay.

19 Q I just want to --

20 A Go ahead.

21 Q -- make sure I --

22 A All right.

23 Q -- read it into the record correctly. Answer,  
24 "Yes, I did." Question, "Did you ever use it?"

25 A What's the date of this deposition?

Mr. Hipple - Direct

99

1 Q Answer -- you asked that before. It was May 1st,  
2 2013.

3 A Okay, go ahead.

4 Q Answer, "Yes, I did."

5 A Uh-huh.

6 Q Line 22, "Okay. And did you use it on this check?"  
7 And I think we were referring there to check 0872.

8 Q Right. Okay.

9 A Oh, maybe we're not. Let me read on.

10 Q Well, apparently, we are.

11 A No, we're talking about this Lucy Cosgrove check,  
12 but I'll get to your check. "Did you use it on this  
13 check?" "I do not recall using it on this check," and  
14 in this deposition we were referring to a check to Lucy  
15 Cosgrove for 7,695, and that appears at line 23 --

16 Q Okay.

17 A -- on page 141.

18 Q I said -- well, I don't know that that -- I don't  
19 know if that's the check you showed me.

20 A Okay.

21 Q There's no identification. I object to this.

22 THE COURT: I'll overrule the objection.

23 THE WITNESS: Okay.

24 BY MR. BERKOWITZ:

25 Q Page 142, line 24, "Okay. Is there any reason why

Mr. Hipple - Direct

100

1 you would use it in particular?" Answer, "Yes, I had  
2 an authorization from Brian. If I need to use this  
3 stamp, I could use it."

4 A That is correct.

5 Q Question, "And how often did you use it?" "I used  
6 it once."

7 A Okay.

8 Q "Okay. And is this it?" And that refers to the  
9 Lucy Cosgrove check. "No," that's your answer.

10 A Uh-huh.

11 Q Do you see that?

12 A Right.

13 Q "Okay. When did you use it?" "After he passed  
14 away."

15 A Right.

16 Q Question, "You -- okay. What did you do?" "I took  
17 my -- some of my money and stamp -- used this stamp on  
18 it."

19 A Okay.

20 Q Question, "Okay. And that was after Brian's  
21 death?"

22 A Right.

23 Q Okay?

24 A Go ahead.

25 Q Did I read that correctly?

Mr. Hipple - Direct

101

1 A Yes.

2 Q And that's referring to this \$40,000 check?

3 A Yes.

4 Q Okay, thank you.

5 A But that check was stamped, but go ahead.

6 THE COURT: But you backdated the check two  
7 days before he died?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Okay.

10 BY MR. BERKOWITZ:

11 Q Now, Mr. Hipple, after your son passed away,  
12 Complete Group filed a lawsuit against Steel Seal Pro,  
13 correct?

14 A Yes.

15 Q And, Mr. Hipple, I'm going to ask you to turn to  
16 Exhibit 51.

17 (Pause in proceedings.)

18 A Go ahead.

19 (Pause in proceedings.)

20 Q Do you see Exhibit 51?

21 A Yes, I'm right there.

22 Q And that is a copy of the lawsuit that Complete  
23 Group filed against Steel Seal Pro, your son's company?

24 A Okay.

25 Q Correct?

Mr. Hipple - Direct

102

1 A I don't know the document, but --

2 Q Well, take your time and look at it. It says --

3 A Well, I've never seen the document, all right?

4 Q Well, Mr. Hipple, let's go to the back of the  
5 exhibit.

6 A All right.

7 Q And it should be the --

8 A Yeah.

9 Q -- the last page.

10 A All right.

11 Q Do you see that?

12 A Yeah.

13 Q Verification?

14 A Yeah.

15 Q Okay. And you recall we looked at this yesterday.  
16 It says you're the managing member of Complete Group?

17 A Correct.

18 Q And it says -- and you signed it?

19 A Right.

20 Q And you said everything in the lawsuit is true and  
21 correct?

22 A Right.

23 Q Okay.

24 A Because I was e-mailed this, okay, in Colombia,  
25 okay, just the signature page. I signed it and sent it

Mr. Hipple - Direct

103

1 back to Ms. Hawthorne.

2 Q Okay.

3 A So I never saw the document, but go ahead.

4 Q Okay. You verified the document?

5 A Yes, by signing it, I verified it, correct.

6 Q Okay. Now, Mr. Hipple, let's go to -- if you go a  
7 couple pages, there are some state cover sheets that  
8 you have and there's a notice to defend. But I want to  
9 get passed that. I want to get to the page where it  
10 says "complaint."

11 A Okay. What page? Oh, "complaint." Go --

12 Q It says "complaint" on the front.

13 A Go ahead.

14 (Pause in proceedings.)

15 Q And you see the page where it says "complaint?"

16 A Yes, I'm right there.

17 Q Okay.

18 A Okay.

19 Q I want you to go to the second page of the  
20 complaint, paragraph three.

21 A Hold on.

22 (Pause in proceedings.)

23 A Three. Go ahead.

24 Q Do you see that?

25 A Yep.

Mr. Hipple - Direct

104

1 Q Now, it says "plaintiff," and that's Complete  
2 Group, correct?

3 A Right, plaintiff. All right.

4 Q -- "is the owner of certain assets including, but  
5 not limited to a chemical formulation which is used to  
6 seal leaks in the engines of older automobiles" --

7 A Right.

8 Q -- "(the product)," correct?

9 A Uh-huh, it says that, yes.

10 Q That's the Steel Seal product? That's the  
11 formulation --

12 A Yes.

13 Q -- for the Steel Seal product?

14 A That's what it's saying, yes.

15 Q Okay. And it says in paragraph seven, "The URL and  
16 intellectual property on the website are not owned by  
17 Steel Seal Pro." Do you see that?

18 A Okay. "Defendant market" -- number seven?

19 Q Number seven. "Defendant marketed the product,  
20 Steel Seal, through the use of an internet website  
21 which advertised the product."

22 A Okay.

23 Q And it says, "The URL and" --

24 A What is URL?

25 Q I don't know. I'm just reading the complaint.



Mr. Hipple - Direct

105

1 A Okay.

2 Q "The URL and the intellectual property on the  
3 website are not owned by the defendant, correct?

4 A Not owned by Complete Group.

5 Q No, that's not what that says, "by the defendant."

6 A Okay.

7 Q Number eight says, "Customers purchase the  
8 product" --

9 A Okay, yes, that's correct.

10 Q -- "on the website and used credit cards."

11 A Okay. What are you -- where -- you got a paragraph  
12 again?

13 Q Yeah, number eight.

14 A Number eight? Go ahead.

15 Q And number nine --

16 A "Customers to purchase" -- all right, number nine?

17 Q Number nine, it says, "The merchant account which  
18 received the credit card payments for the sale of the  
19 product deposited the proceeds of the sale," that's  
20 from the sale of Steel Seal?

21 A That's correct.

22 Q -- "in a deposit account nominally in the name of  
23 the defendant maintained at the First National Bank  
24 and --

25 A Okay.

Mr. Hipple - Direct

106

1 Q -- Trust Company of Newtown."

2 A Who is the defendant in this one?

3 Q Steel Seal Pro, your son's company.

4 A Okay. All right. Okay, go ahead.

5 Q So you told us before you couldn't identify the  
6 First National Bank --

7 A No, I never said --

8 Q -- trust company checks that we were looking at  
9 before, but you knew that that's where the defendant's  
10 bank was?

11 A I didn't say that. I said I knew the First  
12 National Bank was his, okay?

13 Q Now --

14 A I received checks from it.

15 Q -- paragraph ten, it says, "The license agreement  
16 clearly provides that the proceeds are owned by the  
17 plaintiff and not the defendant." Do you see that?

18 A Uh-huh, yeah.

19 Q So you're saying there, if I understand that  
20 correctly, that the money deposited in the Steel Seal  
21 Pro account actually belonged to Complete Group?

22 A That's absolutely correct.

23 Q Okay. Now, let's go to paragraph 14.

24 A All right.

25 Q It says, "Upon information and belief, the account

Mr. Hipple - Direct

107

1 balance -- the account balance of the proceeds in the  
2 trust account is \$161,000." That's a pretty specific  
3 number. You had to get that from somebody that had  
4 access to the account?

5 A No, I thought that the attorneys had got that  
6 information.

7 Q Okay. So you don't -- you didn't get it?

8 A I was in Colombia.

9 Q Did you get it from Melissa?

10 A Huh?

11 Q You didn't get it from Melissa?

12 A No, definitely not.

13 Q Okay. And it says, "Despite repeated demands,  
14 defendant has failed to turn over the proceeds in the  
15 account."

16 A Well, again, I --

17 Q Do you see that?

18 A Yes, I see it, but I don't know what demands, but  
19 go ahead.

20 Q I would like you -- if you could just look at  
21 Exhibit 39 for a second.

22 A Exhibit 39?

23 Q Yeah.

24 (Pause in proceedings.)

25 Q Are you on page 189 of Exhibit 39?

Mr. Hipple - Direct

108

1 A No, I'll go there. Hold on.

2 (Pause in proceedings.)

3 A Okay. I'm losing my spot. 189?

4 Q Yeah.

5 (Pause in proceedings.)

6 A I'm at 189.

7 Q Okay. And you see at the top it's the First  
8 National Bank?

9 A Right, correct.

10 Q And you've identified that account in the  
11 complaint?

12 A Yes. Yes.

13 Q Okay. And I would like you down to -- it says  
14 under date -- under "Business First Account," it's got  
15 "Date." Do you see that?

16 A Hold on. 189. Okay, where?

17 Q It says "Date." Do you see that?

18 A 11-30-2012?

19 Q No, it just says "Date." Let's look at that first.  
20 I want you to be in the right column. Do you see  
21 this --

22 A Okay, "Date," yes.

23 Q -- balance where it's got numbers?

24 A Go ahead. I got it.

25 Q "Date."

Mr. Hipple - Direct

109

1 A Go ahead.

2 Q And I want you to go down to 11-7.

3 A Okay, 11-7. Go ahead.

4 Q Let's start at 11-6. There's \$160,878 in the  
5 account.

6 A Okay.

7 Q And the next date, 11-7, there's \$161,958 in the  
8 account.

9 A Right.

10 Q Okay. In your complaint, you say there's about  
11 \$161,000 in the account.

12 A Right.

13 Q So, it's pretty close to the numbers, correct?

14 A Yeah, but I think the attorneys got that number  
15 from the bank.

16 Q Okay. It appears that after Brian's death, money  
17 continued to come into the account.

18 A For almost three months.

19 Q It continued to sell Steel Seal.

20 A No, it didn't continue to sell Steel Seal. The  
21 processing, the merchant processing was still in Steel  
22 Seal.

23 Q Okay. Now, let's go back to --

24 A And we'll get to that later on.

25 Q Let's go to the complaint.

Mr. Hipple - Direct

110

1 A Okay. Let me finish here. Page 39, 189.

2 Q Yeah, write that down.

3 A 11-7 -- 11-6 and 11-7. 11-6 and 11-7.

4 THE COURT: What's the number of the  
5 complaint again?

6 MR. BERKOWITZ: The complaint is Exhibit 50.

7 THE COURT: Thank you.

8 (Pause in proceedings.)

9 THE WITNESS: Okay.

10 THE COURT: You said 50?

11 MR. BERKOWITZ: Exhibit 50.

12 THE WITNESS: 50.

13 MR. BERKOWITZ: Plaintiff's Exhibit -- I'm  
14 sorry, Plaintiff's Exhibit 51.

15 THE COURT: Thank you.

16 MR. BERKOWITZ: It goes from 50 to the top of  
17 the page.

18 THE COURT: Right.

19 MR. BERKOWITZ: I lost that one.

20 THE WITNESS: 51 now?

21 MR. BERKOWITZ: Exhibit 51 is --

22 THE WITNESS: Go ahead.

23 MR. BERKOWITZ: -- your complaint.

24 THE WITNESS: Okay, we're back at the  
25 complaint, yes?

Mr. Hipple - Direct

111

1 BY MR. BERKOWITZ:

2 Q Yes, and we're at paragraph 14.

3 A Paragraph 14.

4 Q And it says --

5 A Hold on. Hold on.

6 Q Okay.

7 A Hold on. Paragraph 14. Okay.

8 Q "Upon information and belief, the account balance  
9 of the proceeds in the trust account is \$161,000."

10 A Yes.

11 Q Right? "And despite repeated demands, defendant  
12 has failed to turn the proceeds in the trust account to  
13 the plaintiff," right? That's what it says?

14 A That's what it says.

15 Q So who were the repeated demands made upon?

16 A I guess you'll have to talk to the attorneys about  
17 that.

18 Q Okay. Do you know who was the administrator of  
19 Brian Hipple's estate?

20 A Of course I know.

21 Q Okay. And that was Melissa, correct?

22 A Yes.

23 Q Correct?

24 A Yes.

25 Q Okay. And this complaint, in fact, was served upon

Mr. Hipple - Direct

112

1 her?

2 A Okay. I'm not certain about that, but go ahead.

3 Q Okay. Well, let's turn to the next page, Exhibit  
4 52, Plaintiff's Exhibit 52.

5 A All right.

6 Q And I'm going to represent to you -- and I have  
7 here a certified copy of the docket entry. You have a  
8 copy there.

9 (Pause in proceedings.)

10 Q And if you look --

11 A Fleet versus Steel Seal Pro, okay.

12 Q Okay. This is the lawsuit, correct?

13 A I'm assuming this is the law firm trying to  
14 retrieve the money that was belonging to Complete  
15 Group.

16 Q And this is the docket I'm representing to you.

17 A Okay.

18 Q This is an official court paper.

19 A Right, yes.

20 Q And if you look at the second page of this --

21 A Right.

22 Q I'm going to represent to you the first line --

23 A Wait a minute. Give me a minute here. I keep  
24 forgetting -- you are confusing me. Exhibit 52. Okay,  
25 52 and we're -- what are we at? 52? Go ahead, 52.



Mr. Hipple - Direct

113

1 Q Right? You see that?

2 A 52, the second page.

3 Q Second page, right at the top. The complaint was  
4 served on Melissa Moreno.

5 A Okay.

6 Q Do you see that?

7 A Hold on. Hold on.

8 (Pause in proceedings.)

9 A The very top?

10 Q Yes, the very top line.

11 A The top line?

12 Q Dated 12-5-2012.

13 A -- "Deputy marshal serves the defendant pursuant to  
14 Steel Seal Pro. 4520, that's your address." I don't  
15 see -- oh, okay, yeah. Okay, good.

16 Q Okay? Had to hand in the copy to Melissa Moreno?

17 A Yes.

18 Q Okay.

19 A I guess because she was in charge of the estate.

20 Q Okay. Now, I would like you to turn the page to  
21 Exhibit 53.

22 A Okay.

23 (Pause in proceedings.)

24 A Okay.

25 Q And I'm going to represent to you that this is a

Mr. Hipple - Direct

114

1 Pennsylvania form that's headed "Important Notice,"  
2 and you see it's delivered to Steel Seal Pro, care of  
3 Melissa Moreno?

4 A I see. Okay, yeah, right underneath there, yes.

5 Q Okay. And it says you were in default because you  
6 have failed to enter a written appearance personally or  
7 by an attorney?

8 A Okay.

9 Q Okay? Do you see that?

10 A Where's it say in default?

11 Q You can -- right under "Important Notice."

12 A Okay. "You are in default because" --

13 Q Okay? And I'm going to represent to you that this  
14 comes right out of the Pennsylvania Rules of Civil  
15 Procedure, right out of the book.

16 (Pause in proceedings.)

17 A Again, I don't understand, you know, what's --

18 Q Okay.

19 A -- the purpose.

20 Q All right. I'm just --

21 A All right.

22 Q -- asking you to take a look at these things.

23 A These are things that the attorneys have done.

24 Q All right. Well, that's why your attorney is  
25 coming in to testify.

Mr. Hipple - Direct

115

1 A Okay.

2 Q So let's look at Exhibit 54.

3 A Okay. Nothing on page -- oh, yes, there is. Go  
4 ahead, 54.

5 (Pause in proceedings.)

6 Q And you see it says "Precipe to enter default  
7 judgment?"

8 A Well, what's precipe?

9 Q I'm just -- do you see that? I'll tell --

10 A Yes.

11 Q -- you what it means. I just want to make sure  
12 we're looking at the same page.

13 A Yes, we are.

14 Q All right. And this is your attorney, Mr.  
15 Chevelle.

16 A Mike Chevelle.

17 Q He has been subpoenaed to testify, "To enter  
18 judgment in favor of the plaintiff and against the  
19 defendant in the amount of \$198,377.88." Do you see  
20 that?

21 A Yep.

22 Q Okay. That's a pretty specific number, isn't it?

23 A Well, apparently they got the information from  
24 somewhere.

25 Q Okay. You don't know where it came from?

Mr. Hipple - Direct

116

1 A No. I'm in Colombia, okay?

2 Q Mr. Hipple, let's look at your deposition  
3 testimony. Do you have that there in front of you?

4 A Yes, certainly. Go ahead.

5 (Pause in proceedings.)

6 A What page? I don't know --

7 Q It's page 155.

8 A Hold on. Hold on.

9 (Pause in proceedings.)

10 A What was the date of that complaint?

11 Q The date of the entry of judgment?

12 A Yeah, whatever the --

13 Q 1-21-13.

14 THE COURT: What exhibit are you on, Mr.  
15 Berkowitz, please?

16 MR. BERKOWITZ: I'm sorry?

17 THE COURT: What exhibit? I'm sorry.

18 MR. BERKOWITZ: I'm sorry, that's Exhibit 54.  
19 That's the precept to enter judgment.

20 THE COURT: Right, I have that. What -- do  
21 you have a page number you want to give him?

22 MR. BERKOWITZ: There's only one page --

23 THE COURT: Oh.

24 MR. BERKOWITZ: -- in that exhibit.

25 THE COURT: Okay.

Mr. Hipple - Direct

117

1 MR. BERKOWITZ: It's only the first page.  
2 The rest is just a --

3 THE COURT: Right, okay.

4 MR. BERKOWITZ: -- an affidavit of  
5 non-military service.

6 THE COURT: Right, I'm here. Okay.

7 MR. BERKOWITZ: These are state forms.

8 THE COURT: Right.

9 THE WITNESS: Okay, go ahead. I have my  
10 deposition in front of me.

11 BY MR. BERKOWITZ:

12 Q Okay. Page 155.

13 A 155, hold on. Again, what was the date of my  
14 deposition?

15 Q I think it was May 1, 2013.

16 A I got to write that down.

17 Q Well, it's right in the front of your deposition,  
18 so you don't have to worry about that.

19 A Okay. Well, because I'm trying to compare numbers  
20 and time limits.

21 Q And, Mr. Hipple, I'm going to read to you --

22 A Hold on. Hold on. 155, go ahead.

23 Q Line two, "And what you wrote in the complaint  
24 based on your information and belief was that \$161,000,  
25 that was owed to you, right?"

Mr. Hipple - Direct

118

1 A Yes.

2 Q Do you see that? Answer, "Yes, 161,000."

3 A Because that's what they put in the complaint.

4 Q Question, "Do you know how your attorney was able  
5 to enter judgment for 198,377.88 based on that  
6 complaint?"

7 A Right.

8 Q Answer, "Yes, this is my knowledge of what took  
9 place, okay, is that this -- the credit charges, okay,  
10 were continually being put into this account. It took  
11 me approximately two months for which I had to send the  
12 chemical out and not receive any money, okay? And I  
13 think that's where that -- why that figure changed."  
14 Okay? Did I read that correctly?

15 A Yeah. Yeah, because the credit card processing  
16 kept pushing the money into that account.

17 MR. BERKOWITZ: And, Your Honor, you will see  
18 again, when Mr. Chevelle testified, we'll go through  
19 the Rules of Civil Procedure and point out why you  
20 can't do that. But that's for another day.

21 BY MR. BERKOWITZ:

22 Q Mr. Hipple, so judgment was entered for the  
23 198,000, and you can look back at the docket and see  
24 that if you would like.

25 A No. I know --

Mr. Hipple - Direct

119

1 Q Okay.

2 A -- what's been in there.

3 Q Now, let's turn to Plaintiff's Exhibit 55.

4 A Plaintiff's Exhibit 55.

5 (Pause in proceedings.)

6 THE COURT: What's the number again? I'm  
7 sorry?

8 MR. BERKOWITZ: Plaintiff's 55.

9 THE COURT: Thank you.

10 (Pause in proceedings.)

11 BY MR. BERKOWITZ:

12 Q And do you see that it says, "Garnishee's answers  
13 to interrogatories and attachment"?

14 A Uh-huh.

15 Q And you will recall yesterday, that's the type of  
16 document I served on Wachovia Bank to execute on the  
17 SCIX doc --

18 A No, I --

19 Q -- bank account?

20 A No, I don't recall that.

21 Q Okay. Now, do you see in paragraph two, the bank  
22 is saying that it has a -- it has \$197,823.34 that  
23 belongs to Steel Seal Pro? That's the answer in  
24 paragraph two?

25 A That is correct.

Mr. Hipple - Direct

120

1 Q Okay. And they're telling you that they're going  
2 to deduct \$425 as a service charge --

3 A Big service charge.

4 Q Yeah, the bank is charging for their getting  
5 involved.

6 A Yeah, go ahead.

7 Q Which leaves \$197,398.34 for you?

8 A Correct.

9 Q For -- I'm sorry, for Complete Group?

10 A Complete Group, yes.

11 Q Okay? And that's the amount of money that the  
12 First National Bank sent to Complete Group, correct?

13 A And that would have been on February 13, 2013.

14 Q So that's the date -- if you look at the docket on  
15 page --

16 A No, that's all right.

17 Q -- 52 --

18 MR. BERKOWITZ: Your Honor, there are trigger  
19 dates in the Pennsylvania Rules of Civil Procedure that  
20 prohibit you from entering a judgment before 30 days  
21 after the interrogatories are served and the like, so  
22 there's a time lag. It's built into the system so that  
23 the bank and everybody has a chance to challenge this  
24 in case there's a problem.

25 THE COURT: Right.



Mr. Hipple - Direct

121

1 THE WITNESS: But, I thought you did  
2 challenge it.

3 MR. BERKOWITZ: On -- and if you look at the  
4 docket, Your Honor, that we looked at before, which is  
5 Exhibit 52, the judgment --

6 THE WITNESS: Okay, could we just -- could we  
7 just back up a minute?

8 MR. BERKOWITZ: I --

9 THE WITNESS: The statement you made has --  
10 in reference to this document that we're -- last  
11 document we're looking at?

12 BY MR. BERKOWITZ:

13 Q I'm just going to refer you to the -- to the  
14 docket.

15 A No, but I mean the statement that you just  
16 explained to the Judge, are you referring to this  
17 document?

18 Q When you say this document, tell me which one  
19 you're looking at.

20 A The one -- the last one we looked at, 55, where  
21 they took the \$450 --

22 Q Oh, yeah, that's the -- that's the bank's answers  
23 to the interrogatories. And you can see there is a  
24 little block, that is the Bucks County filing system  
25 block.

Mr. Hipple - Direct

122

1 A Okay. But --

2 Q You can see it was recorded. What happens is the  
3 bank files this with the Court. Do you see that, Mr.  
4 Hipple, there's a block up there?

5 A Right, okay. But my question to you --

6 Q Well, you don't get to do that now. You get to do  
7 that --

8 THE COURT: Well, I think he -- I think he's  
9 trying to prepare so --

10 MR. BERKOWITZ: Okay.

11 THE COURT: Okay? Go ahead.

12 THE WITNESS: I'm just trying to -- I'm  
13 trying to --

14 THE COURT: Right.

15 THE WITNESS: The question that he had --

16 THE COURT: Go ahead.

17 THE WITNESS: -- approached or gave to you --

18 THE COURT: Yes.

19 THE WITNESS: -- about the law is in  
20 reference to this document?

21 THE COURT: I think he's trying to explain  
22 that the reason there's a delay in the entry of  
23 judgment is because the system gives notice and  
24 opportunity for everybody to be heard. The bank -- the  
25 bank needs time to object or not object, to answer the

Mr. Hipple - Direct

123

1 interrogatories. Is that -- that's your point?

2 MR. BERKOWITZ: Yeah, that's my point, Your  
3 Honor.

4 THE COURT: Yes.

5 THE WITNESS: Okay.

6 THE COURT: Yes.

7 THE WITNESS: Fine.

8 MR. BERKOWITZ: That's all. It was -- it  
9 just shows that it was on February 13th that the  
10 interrogatories were filed with the Court.

11 BY MR. BERKOWITZ:

12 Q And if you look at the docket, which is 52 --

13 A Where we going, 52?

14 Q Exhibit 52. And if you look at 220 --

15 MR. BERKOWITZ: Your Honor, I will get to a  
16 good breaking point soon if --

17 THE COURT: Okay.

18 MR. BERKOWITZ: So I can replenish my fluids.

19 THE COURT: We'll go to about 12:15.

20 MR. BERKOWITZ: That's fine.

21 THE COURT: All right. It's about ten of  
22 now.

23 THE WITNESS: Okay, 52.

24 BY MR. BERKOWITZ:

25 Q You see 52? And I want you to look at the docket

Mr. Hipple - Direct

124

1 entry on 2-20-2013. It's about two-thirds or  
2 three-quarters of the way down the page, February 20th,  
3 2013.

4 (Pause in proceedings.)

5 Q Do you see that? Do you have that in --

6 A Not yet.

7 Q -- front of you?

8 A Not yet.

9 Q Then let me help you.

10 (Pause in proceedings.)

11 Q You're on the wrong --

12 A You said 52.

13 Q Yeah. Yeah, yeah, but you're --

14 A Oh.

15 Q -- looking for the date down here.

16 A Oh.

17 Q Do you see that? First, you look at 2-13. Do you  
18 see that? That's the bank's answers to the  
19 interrogatories.

20 A Okay.

21 Q Do you see that?

22 A All right.

23 Q And then on 2-20, that's when the judgment is  
24 entered against the bank, the garnishee. Do you see  
25 that?

Mr. Hipple - Direct

125

1 A Okay.

2 Q Okay? And that --

3 A Now, this is the timeline, right?

4 Q This -- well, this is -- this is the bank's -- this  
5 is the court docket --

6 A Yeah, okay.

7 Q -- just showing when things happen.

8 A The timeline. All right.

9 Q So we have certainty there.

10 A Okay.

11 Q And if you see 2-20 is the date the judgment's  
12 entered. And what takes place then is the bank is then  
13 going to send the check that you got to your attorney.

14 A That is correct.

15 Q Okay. And you'll look down a couple lines to March  
16 15th. Do you see that, 3-15 --

17 A Yes

18 Q -- 2013?

19 A Yes.

20 Q That's your attorney filing that to not -- to  
21 notify the Court that the judgment has been satisfied.

22 A Okay.

23 Q The bank has paid the money for the judgment. So  
24 between --

25 A No.

Mr. Hipple - Direct

126

1 Q -- February 20 and April 15th, the check was sent  
2 to you?

3 A Between February and April -- oh, about three  
4 months.

5 Q Okay?

6 A Yeah.

7 Q Now, after the check was delivered to your  
8 attorney --

9 A Right.

10 Q -- I think you called Melissa Moreno --

11 A Yes, I did.

12 Q -- and asked her to pick up the check for you?

13 A That is correct.

14 Q Okay. And she went to your attorney's office and  
15 picked up the check made payable to Complete Group for  
16 about the \$197,000?

17 A That is correct.

18 Q Okay. And she deposited that into the Complete  
19 Group bank account with Bank of America?

20 A Right, because we had a bank account at that point.  
21 Right.

22 Q Okay? And then after she did that, you sent her  
23 \$5,000, correct?

24 A I'm not sure, but go ahead.

25 Q Okay. Well, let's go to Exhibit 44. Do you see

Mr. Hipple - Direct

127

1 Exhibit 44, Mr. Hipple?

2 A Yep, go ahead.

3 Q Okay. And I want you to go to page 52 at the  
4 bottom.

5 A All right.

6 Q In mine it's the third page in.

7 A All right, they might be out of order. Okay, 50  
8 what, 2?

9 Q It says Hipple 00052.

10 A Okay, go ahead.

11 Q Okay? And do you see on 3-29, there's an entry?

12 A 3-20 -- hold on, 3-29, yep, 5,000. Yep.

13 Q Okay. And you sent that to Melissa?

14 A No, I sent that to my grandchildren.

15 Q Well, it says "To Melissa Moreno."

16 A For my grandchildren.

17 Q Okay. All right.

18 (Pause in proceedings.)

19 A You think I paid her 5,000 to pick up the check?

20 Q No. After Brian's death --

21 THE COURT: What was Melissa Moreno's  
22 relationship to Brian?

23 THE WITNESS: She was not his wife, she was  
24 his fiance, okay, for I don't know, six, seven years,  
25 eight years.

Mr. Hipple - Direct

128

1 BY MR. BERKOWITZ:

2 Q She is the mother of the grandchildren --

3 A His -- my two children --

4 Q -- that you have --

5 A -- grandchildren.

6 Q -- correct?

7 A Yes.

8 THE COURT: Okay, thank you.

9 THE WITNESS: My fatherless two  
10 grandchildren.

11 BY MR. BERKOWITZ:

12 Q After Brian Hipple died, you transferred --

13 A After Brian Hipple committed suicide.

14 Q I'm sorry.

15 A Let's use the right terminology.

16 Q I'm sorry. I'm sorry to hear that.

17 A Yeah.

18 Q And I'm sorry if I used --

19 A Because he couldn't handle the pressure.

20 Q He transferred -- you transferred the right to  
21 manufacture, market, and sell Steel Seal from Steel  
22 Seal Pro to your new company, B.B.B. Management Group,  
23 LLC?

24 A Right, Brian, Baylon, and Braydon, yes.

25 Q Right.



Mr. Hipple - Direct

129

1 A Uh-huh.

2 Q And that's the company that sells it now?

3 A That is correct.

4 Q Okay. And in the beginning, it together with  
5 Complete Group were the companies that sold Steel Seal  
6 through the internet?

7 A At the same time?

8 Q That's what --

9 A No.

10 Q -- you told me in your deposition.

11 A Well, no. Well, after Brian's death, I opened up  
12 the new company because if it's an operating -- or  
13 the -- not operating, the license agreement was voided.

14 Q Okay. And I'll represent to you that in your  
15 deposition, unless you would like to go over it, you --

16 A No.

17 Q -- told me that Complete Group and B.B.B.  
18 Management sold -- they were the companies that sold  
19 Steel Seal.

20 A Yeah, but I may refer to that as -- I'm not sure  
21 how your question was, but yes, they both sold Steel  
22 Seal, but not at the same time.

23 Q Okay. If you would like, let's --

24 A Well, it can say whatever it wants in the  
25 deposition, but that's what it is.

Mr. Hipple - Direct

130

1 Q Okay. Let's --

2 A I didn't have two companies selling at the same  
3 time.

4 (Pause in proceedings.)

5 A Okay. We're back to the deposition or --

6 Q Let's see. I just want to make this easy.

7 (Pause in proceedings.)

8 Q Let me start on page 64.

9 A Start on 64.

10 Q Line 21.

11 (Pause in proceedings.)

12 Q I'll start on line 17. "Did" --

13 A Wait a minute. What are we doing, 17 or 21?

14 Q Let's start on 17.

15 A I'm writing this down. You got to remember that,  
16 okay?

17 Q Okay. And it's page 64.

18 A All right. Hold on. It's line 17, page 64. All  
19 right, I got that. Go ahead.

20 Q Question, "Did SCIX have any websites?" Answer,  
21 "Yes, I believe they do."

22 A Yes.

23 Q "Do you know how many they had?" "No, I do not,"  
24 answer. Question, "Okay. Do you know where those  
25 websites are now or who controls those websites?" You

Mr. Hipple - Direct

131

1 respond, "Of SCIX's?" Question, "Yes." Answer, "I  
2 have the websites."

3 A Right.

4 Q Next page, 65, "When you say 'I' are you saying you  
5 personally?" Answer, "No." Question, "Complete

6 Group?" Answer, "Complete Group has the websites."

7 Okay? Did I read that correctly?

8 A Yes.

9 Q Okay.

10 (Pause in proceedings.)

11 A And when you asked me that question you meant who  
12 owned the website? Is that what you were trying to get  
13 at?

14 Q Well, let me -- let me go on.

15 A All right.

16 Q We saw on Exhibit -- Defense Exhibit 2, the UCC 1,  
17 do you recall we looked at that Exhibit A and it listed  
18 the websites?

19 A No.

20 Q You want -- do you want to look at it?

21 A Yeah.

22 Q It's Defense Exhibit 2.

23 (Pause in proceedings.)

24 Q I'm sorry, look at 3, it's easier.

25 A What page are we at?

Mr. Hipple - Direct

132

1 Q We are on Exhibit 3.

2 A Oh, mine.

3 Q Defense Exhibit 3.

4 A Oh.

5 Q List of assets.

6 A Okay, Defense Exhibit 3. All right.

7 Q Do you see that? And it lists websites, correct?

8 A Yes.

9 Q Okay. Now, I think you testified that Scientific  
10 Chemical owned the website.

11 A Scientific Chemical, yes. If you would go back and  
12 do a search, Scientific Chemical owned the website.

13 Q Okay.

14 A And then I think what happened -- all right, I'm  
15 probably talking --

16 Q Well, let's --

17 A -- too much.

18 Q No, that's okay.

19 A No, I want to answer -- I want to answer the  
20 question.

21 Q Go ahead.

22 THE WITNESS: Can I answer the question, Your  
23 Honor?

24 THE COURT: Sure.

25 THE WITNESS: Okay. All right. Because see,

Mr. Hipple - Direct

133

1 he's going down this little road here, okay? All  
2 right, my job with Complete Group, B.B.B. Management,  
3 and all is to take care of the books, okay? I hire  
4 people, which are called SEO companies. My nephew  
5 worked for me for awhile, advertising companies,  
6 website companies, okay, e-mail companies that handle  
7 everything, all right?

8 My involvement is to take care of ordering  
9 the supplies, paying the bills, and keeping the bank  
10 account, and answering some e-mails, okay? That's my  
11 total involvement.

12 So, when you say the websites, the people  
13 that work for me control the websites, okay. I don't  
14 control the websites. If they do something with the  
15 websites, that's something they do, all right? I have  
16 no -- I don't control what has to be done with the  
17 website. So if the website has to be changed from  
18 Scientific Chemical to the new company name, they need  
19 to make those changes.

20 BY MR. BERKOWITZ:

21 Q Okay. I just want to --

22 A All right.

23 Q I'm just trying to find --

24 A I mean you --

25 Q -- out who owns the website.

Mr. Hipple - Direct

134

1 A Well, again, but you're asking me questions that I  
2 don't have the answer or I don't even control.

3 Q Okay. I would like you to look, if you could look  
4 at volume one, Exhibit 38.

5 A Your volume one?

6 Q Yes, plaintiff's volume one.

7 (Pause in proceedings.)

8 A Okay. D what? Or P what?

9 Q It's Plaintiff's Exhibit 38.

10 (Pause in proceedings.)

11 A Okay.

12 Q And I would like you to look at page Hipple 636.

13 A Well, they're not numbered.

14 Q Yes, they are, at the bottom right of the page.

15 A No, it's page one of four.

16 Q On Plaintiff's Exhibit 38?

17 A Okay. Now, they're numbered, fourth page in.

18 Q Okay.

19 A Page what?

20 Q 636.

21 A 6 -- that's where I'm at, right? Okay.

22 Q Okay. And if you look at the top of the page --

23 A Right.

24 Q -- it says the registrant --

25 A Okay.

Mr. Hipple - Direct

135

1 Q -- Scientific Chemicals, Inc.?

2 A Yeah.

3 Q Okay. That's what you told us before?

4 A Right.

5 Q Right. Okay. And that date above that is October  
6 19th, 2001?

7 A That it was still under Scientific Chemicals, Inc.

8 Q Right.

9 A 2001, yes.

10 Q Okay. Now let's go to -- and these are out of  
11 order pages in my book, so I assume they're out of  
12 order in yours.

13 A A little bit.

14 Q Hipple 530.

15 A 530?

16 Q 530.

17 A 530.

18 (Pause in proceedings.)

19 A Okay, go ahead.

20 Q If you look at the top of the page, the date,  
21 December 24th, 2010.

22 A Right, okay.

23 Q Okay. Now it lists the registrant as Complete  
24 Group?

25 A Correct. Yes, it does.

Mr. Hipple - Direct

136

1 Q Okay. And you look under "Administrative contact,"  
2 Brian Hipple, and then under that it says Complete  
3 Group, LLC.

4 A All right. Because Brian Hipple was involved in  
5 network solutions.

6 Q Okay. Okay.

7 A Okay. When he had SCIX I'm assuming.

8 Q Okay. Now --

9 A Well, it certainly did -- oh, yeah, 2010? Sure.

10 Q Okay. Now let's go to page 483. I don't where  
11 that is in the back.

12 A 483? I got it. Just keep going backwards.

13 (Pause in proceedings.)

14 A Okay. Now we're at steelseal.com.

15 (Pause in proceedings.)

16 A Network solutions again.

17 Q Okay. The reg -- I'm sorry, which page are you on,  
18 sir?

19 A You said 483.

20 Q 483. Okay. Do you see the registrant now is  
21 B.B.B. Management Group?

22 A Right.

23 Q Okay. And that's your company?

24 A That's because it's 2013.

25 Q Okay. And you are listed as the administrative



Mr. Hipple - Direct

137

1 contact?

2 A Who is it listing?

3 Q You are.

4 A Oh, yeah. All right.

5 Q Now, let's go to --

6 A I guess we finally got around to taking Brian off.

7 Q Okay. Just going through the records and making  
8 sure we're on the same page with these things, Mr.  
9 Hipple.

10 A Yeah, but you're going through the records that I  
11 had no control over. I shouldn't even be talking about  
12 these records because I don't -- I never seen these  
13 records. Okay, that's where I'm going to start. Okay.

14 Q Okay. Now --

15 A Go to whatever page you want now. Okay.

16 Q Page --

17 A I'm going to do it the right way.

18 Q Page 479.

19 A 479? Yes.

20 Q Okay. Do you see that, the owner is B.B.B.M?

21 A I'm sorry, I don't recognize the page.

22 Q Page 479?

23 A I don't recognize --

24 Q It's not there?

25 A I've never seen the page.

Mr. Hipple - Direct

138

1 Q I'm asking you is it there?

2 A Is what there?

3 Q The page.

4 A There's a page 479. Yes, I see that.

5 Q Okay. And who does it list as the registered  
6 owner?

7 A The registered owner, Network solutions.

8 Q Go to the line where it says B.B.B.M, do you see  
9 that?

10 THE COURT: You mean the top -- the B.B.B.  
11 Management Group, Inc.?

12 MR. BERKOWITZ: Yes.

13 THE WITNESS: Where? At the top? Oh, right,  
14 registered owner.

15 BY MR. BERKOWITZ:

16 Q Do you see where it says --

17 A Yeah.

18 Q Registered owner, B.B.B. Management Group?

19 A Right.

20 Q Right?

21 A But I have no knowledge of this.

22 Q That's fine.

23 A I've never seen this page and I have no knowledge  
24 of it.

25 Q Okay. And it also says on there that it owns --

Mr. Hipple - Direct

139

1 A Okay?

2 Q -- four other domains, correct?

3 A I don't know. I have no knowledge of it.

4 Q But that's what the page said without regard?

5 A Yes, that's what the page says.

6 Q Okay.

7 A But I have no knowledge of it. I've never seen the  
8 page.

9 Q Okay. So you -- but you are the sole owner of  
10 B.B.B. Management Group?

11 A Yes, I believe I am.

12 Q Okay.

13 (Pause in proceedings.)

14 Q Mr. Hipple, volume one, Exhibit 33.

15 (Pause in proceedings.)

16 Q Do you see that? Yes, Plaintiff's Exhibit 33.

17 A Yes.

18 Q Okay. And do you recognize --

19 A Hold on.

20 Q Turn to page 00086.

21 A All right, 0086, go ahead.

22 Q Okay? And do you see that? It looks like a  
23 Quickbooks record of the profit and loss of B.B.B.  
24 Management Group, LLC from October 2012 to May 2013?  
25 Do you see that?

Mr. Hipple - Direct

140

1 A They were the good years, yes.

2 Q Okay. And let's not -- I'm not going to go through  
3 any detail with you. Did you work on the detail of  
4 this? Did you put the Quickbooks entry in?

5 A I just explained it to you. Yes, I take care of  
6 the books.

7 Q Okay. So the commissions there, are those  
8 royalties paid to you?

9 A Where's --

10 Q If you look --

11 A -- the commission?

12 Q -- under cost of goods sold, it's got commission.

13 A Commissions paid? No.

14 Q So who do you pay commissions to?

15 A To Web -- okay, let me think of the name. It's our  
16 Cadillac division.

17 Q Okay. Okay. And you've got under expense, you got  
18 law office, \$56,000.

19 A Yeah.

20 Q That's --

21 A That's a nice sweet number, huh?

22 Q That's for this litigation, right?

23 A No. It's for my -- yes, of course it's for this  
24 litigation.

25 Q Okay. Well, I'm just saying if that's a

Mr. Hipple - Direct

141

1 non-recurring expense, we could treat it different, but  
2 let's --

3 A Yeah, a non-recurring expense, yeah. Sure.

4 Q Let's look at the net income for this eight months.

5 A Right, this was --

6 Q It looks like almost \$56,000 for the eight-month  
7 period, correct?

8 A That's correct. That's what it says at the bottom.

9 Q All right. Now, let's go --

10 A And also, let's look at something else that you're  
11 missing, okay? Do you see any officer salary or member  
12 salary taken out?

13 Q Mr. Hipple, I'm just looking at your records.

14 A Oh, okay. I got to do that on my side. Okay,  
15 sorry.

16 Q That's right.

17 A Hold on. Hold on. 33, 086, my salary.

18 Q And --

19 A Okay.

20 Q -- I would like you to look at Plaintiff's Exhibit  
21 34.

22 A Okay, 34. Okay.

23 Q And this is Complete Group, LLC, your company?

24 A Right.

25 Q And that's the profit and loss from October 2012 to

Mr. Hipple - Direct

142

1 May 2013?

2 A Right.

3 THE COURT: What's the number again? I'm  
4 sorry.

5 THE WITNESS: 34.

6 MR. BERKOWITZ: I'm sorry, 34.

7 THE COURT: Exhibit 34.

8 MR. BERKOWITZ: Exhibit 34.

9 THE COURT: All right, I have it. Thank you.

10 BY MR. BERKOWITZ:

11 Q And you see that profit is \$350,192?

12 A Yes.

13 Q Okay. And these are all from the sale of Steel  
14 Seal?

15 A Oka. So, I have to -- I have to deal with this one  
16 also, P-34.

17 THE WITNESS: I don't -- I don't deal with it  
18 now, right, Your Honor? Just when I come back on it,  
19 right?

20 THE COURT: Right.

21 THE WITNESS: Okay.

22 BY MR. BERKOWITZ:

23 Q Okay. So between those, for the eight-month period  
24 it shows profits of over \$406,000?

25 A If that's the calculation, yes.

Mr. Hipple - Direct

143

1 Q Okay. Now, Mr. Hipple --

2 MR. BERKOWITZ: Your Honor, it's 12:10. I  
3 can -- I think I can finish up with Mr. Hipple in just  
4 a few minutes.

5 THE COURT: Yes, sure, let's do that.

6 MR. BERKOWITZ: Let's just move it along.

7 THE COURT: Yes.

8 (Pause in proceedings.)

9 THE WITNESS: We're not allowed to introduce  
10 any document now, right, like Quickbook --

11 THE COURT: Pardon me?

12 THE WITNESS: I'm not allowed to introduce  
13 any Quickbook documents now?

14 THE COURT: No, you can -- when Mr. Berkowitz  
15 is finished.

16 THE WITNESS: No, I mean as part of evidence  
17 in this case.

18 THE COURT: Yes, you can introduce --

19 THE WITNESS: I can bring my Quickbook  
20 information now?

21 THE COURT: Yes, sure you can.

22 THE WITNESS: Oh, okay.

23 THE COURT: As long as you --

24 MR. BERKOWITZ: As long as it was produced  
25 before.

Mr. Hipple - Direct

144

1 THE COURT: Yes, well, as long as you  
2 produced it in the litigation before and you can  
3 establish that it's admissible. We will talk about  
4 that later, okay?

5 THE WITNESS: Okay.

6 BY MR. BERKOWITZ:

7 Q Mr. Hipple, if you could turn to Exhibit 42.

8 A Different book?

9 Q It's -- this should be book two.

10 (Pause in proceedings.)

11 A Okay, 42.

12 Q Do you see -- and I would like you to look at -- it  
13 says on the top, "Total Merchant Services."

14 A Okay.

15 Q Do you see that?

16 A Yep.

17 Q Okay. And you're familiar, this is how you get the  
18 credit cards --

19 A No, I am --

20 Q -- processed through the bank?

21 A -- not familiar.

22 Q You're not familiar with this?

23 A Nope. I don't even know the company. I'm not  
24 familiar with it and I know nothing about it.

25 Q You know -- okay. Okay. Well, let's just look at



Mr. Hipple - Direct

145

1 this for a second. Do you see at the bottom of this  
2 page --

3 A Right.

4 Q -- there's Brian -- it looks like there are  
5 initials there. They look like BMH to me.

6 A I don't -- at the bottom of the page where?

7 Q Yeah.

8 A I'm not familiar with the document so I'm not even  
9 going to answer the question.

10 Q Okay. Let's go two pages forward.

11 A Two what?

12 Q Two pages forward. It says page three of 12.

13 THE COURT: Mr. Berkowitz, if he's not  
14 aware -- he's not familiar with it --

15 THE WITNESS: I'm not familiar with --

16 MR. BERKOWITZ: I understand.

17 THE WITNESS: -- the document.

18 THE COURT: -- we then generate -- I don't  
19 think it's proper to ask him.

20 MR. BERKOWITZ: I just want to ask him to --

21 THE WITNESS: I object.

22 MR. BERKOWITZ: -- to identify the signature  
23 on it, Your Honor.

24 THE COURT: All right.

25 BY MR. BERKOWITZ:

Mr. Hipple - Direct

146

1 Q Go two pages forward under "required signatures."  
2 I'm not going to verify Brian's signature anymore.

3 THE COURT: Well --

4 MR. BERKOWITZ: Okay.

5 THE COURT: Well, wait a minute. You can't  
6 just refuse to do that.

7 MR. BERKOWITZ: Right.

8 THE WITNESS: Oh.

9 THE COURT: Mr. Berkowitz can ask you a  
10 question if you can identify a signature. And if you  
11 say I can't, you can't.

12 THE WITNESS: Okay.

13 THE COURT: Wait, wait.

14 THE WITNESS: I'm --

15 THE COURT: You have to --

16 THE WITNESS: Sorry.

17 THE COURT: -- answer the questions. You  
18 just can't refuse to. So, Mr. Berkowitz, ask it again,  
19 please.

20 BY MR. BERKOWITZ:

21 Q Mr. Hipple, on page three of 12, there are two  
22 signatures that appear on the page. And do you see it  
23 says "Print name," and it says Brian Hipple?

24 A I see where it says "Print name," Brian Hipple,  
25 yes.

Mr. Hipple - Direct

147

1 Q And it says the date is 12-28-10?

2 A Yes.

3 Q Okay. And there's a signature there?

4 A Yes.

5 Q And that appears to be the signature of Brian  
6 Hipple?

7 A Maybe it appears to be, yes.

8 Q Okay. Now, I would like you to go several pages  
9 forward. You'll just see a void check.

10 (Pause in proceedings.)

11 Q And do you see it says Steel Seal Pro?

12 A Yes.

13 Q Okay. And the date of this document where Brian  
14 signed is 12-28-10?

15 A The date of what, this document?

16 Q When you look on the third page where Brian signed.

17 A Okay. 12-28-10.

18 Q Right?

19 A All right.

20 Q Okay. So it looks like he had a checking account  
21 by then?

22 A You would have to ask Brian that question, okay?

23 Q Well, I don't think I can do that.

24 THE COURT: I'll sustain the objection, all  
25 right? He doesn't -- he didn't prepare this document.

Mr. Hipple - Direct

148

1 He's not familiar with it.

2 MR. BERKOWITZ: Okay.

3 THE COURT: It's not proper, Mr. Berkowitz.

4 MR. BERKOWITZ: Okay.

5 BY MR. BERKOWITZ:

6 Q Now, you had a company, we've talked about it  
7 before, called Steel Seal, LLC, and that's your  
8 company?

9 A 100 percent.

10 Q Okay. And that's a company that, before this case,  
11 defaulted, correct?

12 A We -- oh, yeah, before the start of this case we  
13 defaulted it.

14 Q Okay.

15 A Yes, that's correct.

16 Q And I think you told me in your affidavit on  
17 Exhibit 25, paragraph 70, Steel Seal never had any  
18 assets --

19 A Steel Seal, LLC --

20 Q Yes, Steel --

21 A -- Pennsylvania corporation, never had any assets.

22 Q Never conducted any business?

23 A Well, maybe \$25.

24 Q Okay. Never conducted any business?

25 A That is correct, never --

Mr. Hipple - Direct

149

1 Q Okay.

2 A -- conducted any business.

3 Q Would it be fair to say you're the only one who  
4 would know anything about Steel Seal, LLC?

5 A Yes, it would be very fair to say that.

6 Q Okay. Mr. Hipple, I would like you to turn to  
7 Exhibit 47.

8 A Okay. All right.

9 Q Do you recognize that writing?

10 A Sure, that's my writing.

11 Q That's your writing. And you see it says "Merchant  
12 Services" on the top?

13 A Right.

14 Q Okay. And that's -- again, that's the credit card  
15 processing company?

16 A That's right.

17 Q You see you got a name up there, Mike Zedzick (ph)?

18 A Yes, I spoke with --

19 Q And you got --

20 A Yes.

21 Q You got there it says "New Steel Seal, LLC," and  
22 you got a federal ID number. Do you see that?

23 A Yes, of course.

24 Q Okay. So you had that? Nobody else would have  
25 that information?

Mr. Hipple - Direct

150

1 A This is all my information, yes, correct.

2 Q Okay. Let's turn to Exhibit 36 and that would be  
3 in volume one.

4 A Volume one?

5 (Pause in proceedings.)

6 Q And this is Plaintiff's Exhibit 36.

7 A Right.

8 (Pause in proceedings.)

9 Q Now, at the top of Exhibit 47, you had a name,  
10 Michael Zedzick?

11 A Yes.

12 Q Do you see that? And let's look at this  
13 application for merchant card processing. Do you see  
14 that name, sales rep, Michael Zedzick?

15 A Okay.

16 Q And do you see up there it says "Association  
17 Number"?

18 A Right.

19 Q Do you see that? You've got 105922?

20 A Right.

21 Q And if you turn to Exhibit 46, I'll represent to  
22 you that that's the same association number.

23 A 46?

24 Q Well, let's start with 42.

25 A Okay.

Mr. Hipple - Direct

151

1 (Pause in proceedings.)

2 Q We looked at the merchant services agreement for  
3 Steel Seal Pro, right, that was the one we looked at  
4 before?

5 A The merchants agreement for who? Steel Seal Pro?

6 Q Steel Seal Pro.

7 A Right.

8 Q And then if you go to Exhibit 46 --

9 A Right.

10 Q -- do you see that it says "Merchant Statement" and  
11 it's got an associate, number 46?

12 A I never seen this statement. I don't --

13 Q Okay. Well, I'm just asking you -- we talked -- I  
14 just want you to look at the association number at the  
15 top of that.

16 A 105922.

17 Q Okay. Thank you. And that's the one that appears  
18 right at the top of this Exhibit 36, correct?

19 A Yes.

20 Q Okay. Now, let's look down. Do you see it says  
21 "Contact Name"?

22 A Which one was it that we were looking at? 37?

23 Q We were looking at 36.

24 A Where's it say "Contact Name"?

25 Q If you look down the --

Mr. Hipple - Direct

152

1 A Oh.

2 Q -- left-hand corner under number one, Brian Hipple.

3 A Okay.

4 Q Okay. And if you look just about a line or so  
5 above that on the right side it says "Length owned, 15  
6 years?" Do you see that? It's on the right.

7 A I've never seen this document.

8 Q I'm just -- I'm just going through it with you.

9 A Okay. Length owned what?

10 Q 15 years.

11 A Where?

12 Q It's halfway down the first block on the right  
13 side.

14 A What does length own --

15 Q Right there.

16 A -- length own mean?

17 Q Okay, it says -- do you see that it says 15 years?

18 A Yes.

19 Q Okay. Now, let's look at -- do you see that W-9  
20 information?

21 A Where at?

22 Q It's the next big block. It says "Two. W-9  
23 Information."

24 A W-2 you mean?

25 Q It's -- well, it's number two. It says "W-9



Mr. Hipple - Direct

153

1 Information."

2 A No, I don't see it.

3 THE COURT: Why don't you point it out to  
4 him.

5 BY MR. BERKOWITZ:

6 Q I know you haven't seen this, but let's -- right  
7 there.

8 A Okay.

9 Q W-9.

10 A All right, W-9 form. Okay. Information holding.  
11 Go ahead.

12 Q Okay. And you see an EIN number, and could you  
13 read that off?

14 A 753099885.

15 Q Okay. Now, I would like you to look at your  
16 Exhibit 47 that you said was your writing.

17 A Right. Okay.

18 Q And do you see under where it says "New Steel Seal,  
19 LLC?"

20 A Hold on.

21 (Pause in proceedings.)

22 A In my handwriting, "New Steel Seal, LLC?"

23 Q Yes. And you'll agree with me that's the same EIN  
24 number?

25 A Yes, it is the same number.

Mr. Hipple - Direct

154

1 Q Okay. And I think you testified you're the only  
2 one with this information, correct?

3 A No. Oh, you mean with Steel Seal?

4 Q Yeah, about Steel Seal.

5 A Yeah, I'm the only one that has Steel Seal  
6 information, yeah.

7 Q Okay. Now, it says "Owner and Officer  
8 Information." Do you see that?

9 THE COURT: We're back to -- we're back to  
10 36.

11 BY MR. BERKOWITZ:

12 Q We are back to 36.

13 A Okay.

14 Q And do you see it says "Owner and Officer  
15 Information?"

16 A Yes.

17 Q And you see it says Brian Hipple?

18 A Yes.

19 Q And you see it's a social security number?

20 A Yes.

21 Q Okay. Now, let's go forward. Let me get the page  
22 for you. It has a --

23 A Now --

24 Q It says "Guarantors."

25 A Now I got this.

Mr. Hipple - Direct

155

1 Q You see "Guarantors?"

2 A What's this?

3 Q If you go forward several pages, it's some fine  
4 print at the top of the page, and then it's got "12.  
5 Merchant Signatures." Do you see that?

6 A "Merchant Signature," yeah.

7 Q Yeah, do you see that?

8 A Right.

9 Q And you see there's a block?

10 A Right.

11 Q And it looks like it was typed in, the name, Brian  
12 Hipple?

13 A Right.

14 Q Okay?

15 A Okay.

16 Q Now let's look at the next page.

17 A Okay.

18 Q Do you see that? Now, let's look at the bottom of  
19 the page.

20 A Right, Steel Seal, LLC.

21 Q Steel Seal, LLC. And that's the address?

22 A Right.

23 Q Do you see it's typed in, "Brian Hipple?"

24 A Yeah.

25 Q Okay. And you see "Printed Name of Owner/Officer,

Mr. Hipple - Direct

156

1 Brian Hipple?"

2 A Right.

3 Q And you see "Owner?"

4 A Right.

5 Q Now look at the bottom of the page on the right.

6 A Okay.

7 Q 10-10-2012.

8 A Yeah, well, Brian very well couldn't have signed  
9 that back then.

10 Q Well, that's right. You submitted this with Brian  
11 as the guarantor, isn't that correct?

12 A I never submitted this form. I never seen this  
13 form, okay?

14 Q You testified, sir, that you're the only one with  
15 this information, with the EIN number.

16 A No.

17 Q And you own --

18 A Mike had --

19 Q -- Steel Seal, LLC.

20 A No, Mike -- I'll cross -- I'll do that  
21 cross-examine when I come up, okay?

22 Q Okay. But you'll agree with me --

23 A I agree with you that --

24 Q -- that whoever filled this out --

25 A No. What am I agreeing with you?

Mr. Hipple - Direct

157

1 Q That whoever filled this out --

2 A Right.

3 Q -- on 10-10-2012 --

4 A Right.

5 Q -- that had the information, the EIN number of  
6 Steel Seal --

7 A Right.

8 Q -- whoever that was --

9 A Right.

10 Q -- just like on your handwritten page, wasn't Brian  
11 Hipple?

12 A No, because he wasn't around.

13 Q Because Brian Hipple had -- was passed away by  
14 then?

15 A Right. Yeah, right, correct. Okay, I will take  
16 this back when --

17 MR. BERKOWITZ: This would be a good place to  
18 break.

19 THE COURT: Are you finished with him or --

20 MR. BERKOWITZ: I would like to just review  
21 my notes --

22 THE COURT: Okay.

23 MR. BERKOWITZ: -- before I say yes. I think  
24 I am.

25 THE COURT: All right. Okay. All right.

1 We'll take a lunch break. Let's come back at 1:00.

2 It's a little bit after 12:20.

3 THE WITNESS: Come back at 1:00?

4 THE COURT: No, I'm sorry, I apologize.

5 Let's come back at 1:30, give you an hour, little over  
6 an hour. All right?

7 MR. BERKOWITZ: Thank you.

8 THE COURT: See you at 1:30.

9 (Luncheon recess, 12:22 p.m.)

10 \* \* \*

11 AFTERNOON SESSION

12 1:33 p.m.)

13 THE COURT: Please be seated. Mr. Hipple --

14 MR. BERKOWITZ: Your Honor --

15 THE COURT: Oh, you're done?

16 MR. BERKOWITZ: -- I have finished with Mr.  
17 Hipple.

18 THE COURT: Oh, okay.

19 MR. BERKOWITZ: And if I could raise a  
20 procedural question for you. First, Mr. Hipple, I  
21 wanted to talk to you about --

22 THE COURT: Yes.

23 MR. BERKOWITZ: Would you like to talk to us  
24 first or --

25 THE COURT: Yes. You want it on the record,

1 right?

2 MR. BERKOWITZ: Do you want it on the record  
3 or now?

4 MR. HIPPLE: Yeah, it can go on the record.

5 THE COURT: This is about the case, right?

6 MR. HIPPLE: Yes. No, it's about me  
7 personally, my problem with reading.

8 THE COURT: Oh, okay. Yes, let's put it on  
9 the record. Go ahead, Mr. Hipple, do you want to go  
10 first?

11 MR. HIPPLE: Okay. Basically, I have the  
12 questions for the expert, okay? And there's every word  
13 in here that I don't understand.

14 THE COURT: Okay.

15 MR. HIPPLE: Okay? Do you want to see it?

16 THE COURT: All right, yes, let me see. Now,  
17 what -- so this is the expert? What are you handing  
18 me?

19 MR. HIPPLE: This is the questions for the  
20 expert.

21 THE COURT: Okay. Why don't you go back  
22 there so he can hear you?

23 MR. HIPPLE: It's --

24 THE COURT: Oh, this is your questions,  
25 right?

1 MR. HIPPLE: It's my questions to the expert.

2 THE COURT: All right, but --

3 MR. HIPPLE: And I have two exhibits.

4 THE COURT: All right. Is the expert the  
5 next witness?

6 MR. HIPPLE: Yes.

7 MR. BERKOWITZ: My expert, yes, Mr. Geisser  
8 is going --

9 THE COURT: Okay.

10 MR. BERKOWITZ: -- to be the next witness.

11 THE COURT: All right. Now, let me ask you  
12 this before we do that. Do you want to present any  
13 testimony now or you want to wait until --

14 MR. HIPPLE: No, I want to do my testimony  
15 later after he's done.

16 THE COURT: In your case? That's fine.  
17 Okay.

18 MR. HIPPLE: Yes, I need time to prepare.

19 THE COURT: Yes. Now, what's your problem  
20 now? Tell me what your problem is.

21 MR. HIPPLE: A lot of it.

22 THE COURT: Okay.

23 MR. HIPPLE: Look at the wording.

24 MR. BERKOWITZ: Your Honor, if I -- Mr.  
25 Hipple asked me if it would be okay with me if his



1 expert witness sat with him at the table to help him  
2 through the document, and I told Mr. Hipple I had no  
3 objection, but it was --

4 THE COURT: Yes, that's fine.

5 MR. BERKOWITZ: -- not my decision.

6 THE COURT: Your expert to help you with --

7 MR. HIPPLE: The reading of the document.

8 THE COURT: Fine.

9 MR. HIPPLE: Can he read it or no?

10 THE COURT: I'm not sure I understand.

11 MR. HIPPLE: Can he just ask the questions  
12 off the document? It's very, very complicated.

13 THE COURT: Okay. Your expert ask the  
14 questions of the other expert?

15 MR. HIPPLE: Expert, yes.

16 MR. BERKOWITZ: I have a problem with dueling  
17 experts --

18 MR. HIPPLE: It's the same wording.

19 MR. BERKOWITZ: -- but maybe we should --

20 THE COURT: Well, what I suggest is this.  
21 I'll have your expert tell you what questions to ask.

22 MR. HIPPLE: Well, no, we're going to ask all  
23 of these questions.

24 THE COURT: You're going to ask them?

25 MR. HIPPLE: But we -- I cannot read these

1 questions.

2 THE COURT: Well, your expert can tell you  
3 and read it for you? Is that all right with you, Mr.  
4 Berkowitz?

5 MR. HIPPLE: Yeah.

6 MR. BERKOWITZ: Yeah, I have no objection to  
7 that, Your Honor.

8 THE COURT: If he whispers in your ear ask  
9 him this, and you ask him this.

10 MR. HIPPLE: No, he's going to -- he has to  
11 tell me what the word is.

12 THE COURT: Yes, that's fine, but you're  
13 going to ask the question.

14 MR. HIPPLE: Yeah, okay.

15 THE COURT: We're not going to have another  
16 expert --

17 MR. HIPPLE: All right.

18 THE COURT: He's not going --

19 MR. HIPPLE: And I can't --

20 THE COURT: -- to question the other expert.

21 MR. HIPPLE: And I can't use one of these  
22 young law clerks back there, right, to read it?

23 MR. BERKOWITZ: No, they're not members of  
24 the Bar. They can't --

25 THE COURT: No.

1 MR. BERKOWITZ: -- represent you.

2 MR. HIPPLE: No, no?

3 THE COURT: No.

4 MR. HIPPLE: Okay.

5 THE COURT: You knew all this. You shouldn't  
6 have fired your lawyer.

7 MR. HIPPLE: Well, I didn't think I was going  
8 to have this kind of a --

9 THE COURT: Well, maybe you should have  
10 thought of that.

11 MR. HIPPLE: Yes.

12 THE COURT: Let me ask you both something. I  
13 mean you -- I don't want to get involved in settlement,  
14 but did you -- did you -- would you think it would be  
15 worthwhile for you two to talk again?

16 MR. BERKOWITZ: We tried.

17 THE COURT: You tried?

18 MR. BERKOWITZ: I asked Mr. Hipple if he's --

19 MR. HIPPLE: We're not -- we're not even  
20 close. Okay.

21 THE COURT: Did Mr. Berkowitz give you the  
22 number that he -- and I don't want to know the number,  
23 but when he added up what he thinks he's owed on the  
24 two notes -- not he, but his client, Ms. Concepcione,  
25 is owed on the two notes, you know that number, right?

1 MR. HIPPLE: Yeah, exactly.

2 THE COURT: Okay. He explained how he came  
3 to that conclusion, right?

4 MR. HIPPLE: Right.

5 THE COURT: And did you respond to Mr.  
6 Berkowitz and respond to those numbers?

7 MR. HIPPLE: Yes.

8 THE COURT: You don't have to tell me what.  
9 Okay.

10 MR. BERKOWITZ: he --

11 THE COURT: You don't think it's worthwhile?

12 MR. BERKOWITZ: Well, when we went to Judge  
13 Hay, there was really no point in --

14 THE COURT: Okay. All right, that's fine.

15 MR. BERKOWITZ: -- further discussion.

16 THE COURT: I heard enough.

17 MR. HIPPLE: Okay. So he --

18 THE COURT: Okay.

19 MR. HIPPLE: -- can just help me with the  
20 wording then, right?

21 THE COURT: Right. So, in other words,  
22 your -- I'll allow your expert -- is he here?

23 MR. HIPPLE: Yes.

24 THE COURT: Your name, sir?

25 MR. PEDERSON: William Pederson.

1 MR. HIPPLE: William Pederson.

2 THE COURT: All right, Mr. Pederson. So Mr.  
3 Pederson can sit with you, I'll allow him to tell you  
4 what questions to --

5 MR. HIPPLE: Not tell me. He just needs  
6 to -- there are certain words in there that I can't  
7 read.

8 THE COURT: Right, you need some help. You  
9 don't have a problem, Mr. Berkowitz?

10 MR. BERKOWITZ: I don't.

11 THE COURT: No. Okay.

12 MR. HIPPLE: Okay.

13 THE COURT: So you want to call your witness  
14 next, Mr. Berkowitz?

15 MR. BERKOWITZ: Yes, Your Honor. I would  
16 like to call Wayne Geisser.

17 THE COURT: Sure.

18 MR. BERKOWITZ: And, Your Honor, Mr. Geisser  
19 is going to be using his expert report. And it appears  
20 as Exhibit 41 -- I'm sorry, 31 in plaintiff's, but I  
21 have a tabbed copy that's mine that you could use.

22 THE COURT: Oh, great. Thank you.

23 MR. BERKOWITZ: I think it will facilitate --

24 THE COURT: Good.

25 MR. BERKOWITZ: -- the testimony.

1 THE COURT: Thank you.

2 MR. BERKOWITZ: I would just ask that --

3 THE COURT: Right.

4 MR. BERKOWITZ: -- if I get it back at the  
5 end --

6 THE COURT: Okay. Good --

7 MR. BERKOWITZ: It's my only --

8 THE COURT: -- afternoon, Mr. Geisser.

9 MR. GEISSER: Good afternoon.

10 THE COURT: Mr. Geisser, if you wish to take  
11 your jacket off, you're not going to offend me. It's  
12 okay. I know it's hot in here. So it's totally up to  
13 you.

14 MR. GEISSER: I wouldn't mind doing that,  
15 Your Honor.

16 THE COURT: You absolutely can.

17 MR. GEISSER: Okay.

18 THE COURT: Okay? And that goes also to Mr.  
19 Pederson, if you wish to take your -- if you wish to  
20 take your jacket off, you're permitted to do that.

21 MR. PETERSON: Okay.

22 THE COURT: Okay.

23 MR. GEISSER: It's actually cooled down a lot  
24 in here since this morning.

25 THE COURT: All right, let's go.

1 WAYNE GEISSER, Plaintiff's Witness, Sworn.

2 COURTROOM DEPUTY: State and spell your name  
3 into the microphone for the record.

4 DIRECT EXAMINATION

5 BY MR. BERKOWITZ:

6 Q And I missed that. Did you identify yourself for  
7 the record yet?

8 A Not yet. Just -- I'm -- let me just adjust the  
9 microphone here. It's kind of falling down. My name  
10 is Wayne Geisser, G-E-I-S-S-E-R.

11 Q And, Mr. Geisser, would you tell us first your  
12 educational background and then your professional  
13 experience?

14 A Sure. I'm a graduate of Temple University. I have  
15 a B.B.A. in Accounting. I also took graduate courses  
16 in Drexel University as well. I began my career as an  
17 IRS agent and spent about seven years with the IRS  
18 examining federal corporate individual and partnership  
19 tax returns. And then I left the IRS and I joined the  
20 United States Securities and Exchange Commission.

21 At the SEC, I started my career as a senior  
22 accountant and I was eventually promoted to be a branch  
23 chief in the SEC division enforcement. We were  
24 basically charged with investigating violations of the  
25 federal securities laws. A lot of my responsibility

Mr. Geisser - Direct

168

1 had to do with accounting fraud while I was there.

2 In 1986, I left the SEC and I joined a firm  
3 called Nihill and Riedley, and I've been continuously  
4 with that firm since 1986. In 2010, the firm was sold  
5 to Smart Divine. So while it's the same corporate  
6 entity, it's a different name. So we're currently  
7 trading under Smart Divine.

8 I currently serve as the managing director of  
9 that firm, and prior to that, prior to selling my  
10 equity interest, I was a partner at Nihill and Riedley.

11 Q And could you tell me what certifications -- and  
12 you're a CPA?

13 A Sure, yes. Just generally speaking, I have a  
14 practice in forensic accounting, the way it's termed.  
15 I have a -- I'm a certified public accounting since  
16 1977. I have -- I'm a certified fraud examiner. I  
17 have -- I'm certified in business valuations by the  
18 Association of Certified Valuation Analysts.

19 I'm also certified by the American Institute  
20 of Certified Public Accountants in two areas,  
21 specifically business valuation and financial  
22 forensics.

23 Q And were you called upon to use some of your  
24 forensic accounting skills in the context of this  
25 engagement?



Mr. Geisser - Direct

169

1 A Very much so. This was a situation where we were  
2 involved in essentially doing a reconstruction of books  
3 and records and try and put pieces together so that  
4 they make sense and tell a story, and that's what we do  
5 as forensic accountants.

6 MR. BERKOWITZ: Okay. Your Honor, I would  
7 like to offer Mr. Geisser as an expert witness to  
8 testify on behalf of the plaintiff.

9 THE COURT: Okay. Any questions on his  
10 qualifications?

11 MR. HIPPLE: No, none.

12 THE COURT: Okay. All right, I find that Mr.  
13 Geisser is an expert in the area he identified here  
14 this morning, and I'll allow him to testify and  
15 proceed.

16 BY MR. BERKOWITZ:

17 Q Mr. Geisser, would you tell us the nature of your  
18 engagement for the plaintiff in this case?

19 A Sure. Mr. Berkowitz, I think it would be easier if  
20 I start to walk through my report a little bit so  
21 help -- I think help everybody in the courtroom if I do  
22 it that way.

23 But generally speaking, and I'm going to  
24 direct everybody's attention to page one of my report.  
25 I was retained essentially to analyze the available

Mr. Geisser - Direct

170

1 financial records to estimate the distributable cash  
2 flow available to the owners and insiders of the  
3 subject companies and to prepare a calculation of value  
4 for SCIX as of approximately October 13th, 2010, based  
5 on the records that were available to me, October 13th,  
6 2010, of course, was the date that the bank accounts  
7 were garnished.

8 Q Okay. And you're here to tell us the value of the  
9 assets that were transferred?

10 A I'm here to tell you what the value of the cash  
11 flows associated with the Steel Seal business was.

12 Q Okay.

13 A We have -- this is a case where we have an  
14 expansive number of entities involved that we're going  
15 to walk through, but the one thing that is continuous  
16 throughout the entire story is that there's a single  
17 product that's being sold, and that's Steel Seal.

18 And when we look at the records we see that  
19 that is continuous from the beginning of the relevant  
20 period of time right through the end of the period of  
21 time that we looked at. So we're looking at the cash  
22 flows, what the product is making for the owners of the  
23 business.

24 Q And is that how you determined what the value of  
25 the product, Steel Seal, is?

Mr. Geisser - Direct

171

1 A It's the -- it's the value of the cash flows  
2 associated with the product.

3 Q Okay. And can you tell us what information you  
4 used to derive the values that you will tell us about?

5 A Sure. This was a case that we were really working  
6 with what I'll call fragmentary records. We had some  
7 schedules Cs, which schedule C is in connection with an  
8 individual 1040. It's where you report your business  
9 income.

10 We had two or three pages of Quickbook  
11 records, and we had bank records that I believe we  
12 obtained and -- actually, you obtained through subpoena  
13 to the various banks that are involved in this case.  
14 So it was a matter of putting together those few  
15 accounting records along with the bank records as well.

16 We had no formal financial statements that we  
17 had available to us in terms of a typical financial  
18 statement that you would see with an income statement,  
19 a balance sheet, cash flow statements. They didn't  
20 exist. We didn't have any underlying Quickbooks  
21 records to take a look at. And so it was a very --  
22 very much a reconstructive process that we had to go  
23 through in order to try and establish what the value of  
24 the cash flows associated with the Steel Seal product  
25 were.

Mr. Geisser - Direct

172

1 Q And did you ever have an occasion to review the  
2 American Express records?

3 A I did. They were produced to us, and we reviewed  
4 those and analyzed the American Express records.

5 Q And did you ever review financial records, balance  
6 sheet, income statement, statement of cash flow, for  
7 either SCIX or Steel Seal Pro?

8 A Again, as I mentioned, we didn't have those types  
9 of records available to us. In order to do a classic  
10 business valuation, you typically have a set of  
11 financial statements you're dealing with. Those kind  
12 of records were not available to us so we had to do  
13 this reconstructive process that I referred to earlier.

14 Q And when you say they weren't available to you, how  
15 did you know that they weren't available?

16 A Well, Mr. Berkowitz, you told us that they weren't  
17 available, that they had been requested through the  
18 various parties and were not produced.

19 Q Now, did the lack of the normal business records, I  
20 don't know how else -- would you call the balance  
21 sheet, income statement, and statement of cash flow to  
22 be normal business records?

23 A Very basically, they're called financial  
24 statements.

25 Q Okay.

Mr. Geisser - Direct

173

1 A That's -- and when you talk about a set of  
2 financial statements you're typically talking about  
3 those three specific documents, and they make up a set  
4 of financial statements.

5 Q And could I call those normal business records?

6 A You can. I would call them, more specifically,  
7 financial statements.

8 Q Okay.

9 A Yeah.

10 Q And did that affect how you performed your  
11 engagement to issue your expert report?

12 A It sure did. When you don't have a good set of  
13 records or a basic level of records, you have to work  
14 with what you have, and that's exactly what I did in  
15 this case.

16 I discussed with you specifically what  
17 records were available. I explained the nature of the  
18 issues that came up with having what I described as  
19 fragmentary records.

20 I described what we could do, what we  
21 couldn't do, and that's how we ended up with the report  
22 that we have in front of us today. It was basically I  
23 used the fragmentary records in the best way that I  
24 thought was available to me.

25 Q Now, in analyzing those records, did you act in

Mr. Geisser - Direct

174

1 accordance with the guidelines of the AICPA?

2 A Yes, I did.

3 Q And could you explain basically if you could the  
4 AICPA methodology for calculating the value here of  
5 what we're asking to determine, the value of the cash  
6 flow from Steel Seal?

7 A Sure. The American Institute of CPAs has a  
8 pronouncement called the Statement on Standards of  
9 Valuation Number 1, and it's that statement on  
10 valuation that kind of sets the standard in terms of  
11 how you do these types of reports.

12 And it provides for two basic approaches to  
13 doing a valuation-type calculation. One is a process  
14 ends up in an opinion of value. It's a more  
15 comprehensive view of trying to value an individual  
16 business.

17 The second is called a calculation of value.  
18 A calculation of value is where you look at it from a  
19 more limited volume of records and try to produce a  
20 meaningful result based on the records that are  
21 available to you, and it's typically something that you  
22 agree on with the client in terms of what the approach  
23 is going to be because there is a limitation to the  
24 scope of the records you're dealing with.

25 Q So would it be fair to say that you were -- were

Mr. Geisser - Direct

175

1 you able to issue an opinion of value based on the  
2 records that you had?

3 A I was able to issue an opinion of calculation of  
4 value in connection with the records I looked at.

5 Q And what were you not able to produce according to  
6 the AICPA standards?

7 A An opinion of value that's broader in scope.

8 Q Okay.

9 A So it's an opinion of value versus a calculation of  
10 value.

11 Q And you did the calculation of value?

12 A I did.

13 THE COURT: What's the difference?

14 THE WITNESS: The --

15 THE COURT: Could you explain the difference  
16 in the terms?

17 THE WITNESS: Sure. Typically, when you do a  
18 business valuation you're looking at a free standing  
19 business that has a set of financial statements, it  
20 sells a certain product or line of products, it has  
21 expenses, it has income, it has a certain ownership  
22 associated with it, it's got an economic environment  
23 that it lives in, it has a supply chain, and there's  
24 other risk dynamics associated with it.

25 And when you do a business valuation you

Mr. Geisser - Direct

176

1 consider all those types of things in that valuation  
2 process. And so it's a very extensive process when you  
3 consider all those factors.

4 And you also are obligated under the  
5 standards to use basically three approaches to value.  
6 One is the income approach, one is a market value  
7 approach, and one is an asset-based approach. But  
8 being able to do that really is dependent upon having  
9 records that allow you to do that.

10 THE COURT: Right.

11 THE WITNESS: If you do not have those  
12 records --

13 THE COURT: Right.

14 THE WITNESS: In this case, we didn't have  
15 balance sheets, very basic to the process. So I  
16 couldn't even begin to take and analyze a balance sheet  
17 because none were produced.

18 THE COURT: Okay.

19 THE WITNESS: And so there's a fundamental  
20 scope limitation on what was available to me in order  
21 to be able to do that. And so recognizing that, I  
22 advised the client accordingly, specifically, in this  
23 case, working with Mr. Berkowitz, and I said that there  
24 was an alternative way that we could approach this, and  
25 that was to use the available records, qualify the



Mr. Geisser - Direct

177

1 opinion accordingly, and call it what it was, which was  
2 a calculation of value --

3 THE COURT: Right.

4 THE WITNESS: -- which is what I felt we  
5 could do under the circumstance in order to produce a  
6 meaningful result. And I will emphasize that I do feel  
7 in this case that I produced a meaningful result that I  
8 think is reliable within the scope of what I was able  
9 to accomplish.

10 THE COURT: Okay, thank you.

11 BY MR. BERKOWITZ:

12 Q And in providing the calculation of value that you  
13 performed, did you apply and follow the AICPA approved  
14 methodology and standards?

15 A I did, which is basically a disclosure of what  
16 we're doing and how we're going about doing it, and  
17 just being fully disclosed in terms of the approach  
18 that we're using to come out with the calculation of  
19 value.

20 Q Would you tell us --

21 A And that's embodied --

22 Q I'm sorry.

23 A -- in the report. I'm sorry. That's explained in  
24 the body in the report.

25 Q Okay. Do you want to further explain that to us or

Mr. Geisser - Direct

178

1 would you like to --

2 A I think that will become more evident as we go  
3 through things, but I think that's basically it. And  
4 to answer your question directly, yes, we followed the  
5 AICPA standards for a calculation of value.

6 Q Okay. And what was your understanding of the  
7 nature of the SCIX business?

8 A Well, the SCIX business was the sale of Steel Seal,  
9 and it's a -- it's an interesting product because it  
10 has a certain unique quality to it, as I understand it,  
11 that's very limited in terms of any other product.

12 As I understand it, there's basically no  
13 other product that does exactly what Steel Seal does,  
14 and because of that, it's a very profitable product  
15 according to my analysis, and a very valuable product  
16 and a very valuable business because of those  
17 attributes that make it rather unique and very  
18 profitable, and we can go through that.

19 Q And what are certain things that -- things like  
20 patents and secret formulas, do those affect the value  
21 that you find in a business?

22 A They sure do. When you're doing --

23 MR. HIPPLE: Objection. Or am I not allowed  
24 to object yet?

25 THE COURT: Yes, you can object. What's the

Mr. Geisser - Direct

179

1 basis of your objection?

2 MR. HIPPLE: Your Honor --

3 THE COURT: You have to speak up.

4 MR. HIPPLE: The basis is on his last  
5 question where he made a statement that this is a  
6 unique product and it's like it's the only one out  
7 there. Does he have knowledge that that's the only one  
8 out there? I mean has he been to an auto part stores,  
9 because there's five or ten different ones out there.

10 THE COURT: All right, I'm going to overrule  
11 the objection. I think he said he's going to talk  
12 about that as he progresses.

13 MR. HIPPLE: Okay.

14 THE COURT: Is that right, Mr. Geisser, are  
15 you going to talk about that a little bit later in  
16 your --

17 THE WITNESS: I am, but I --

18 THE COURT: Okay.

19 THE WITNESS: -- can also just address is  
20 directly --

21 THE COURT: Sure.

22 THE WITNESS: -- right now.

23 THE COURT: Go ahead.

24 THE WITNESS: I mean my understanding is  
25 there's a uniqueness to the product. When you go onto

Mr. Geisser - Direct

180

1 the internet and you look at the Steel Seal website,  
2 and it describes itself as a rather unique product.  
3 It's specific to accomplish a very specific purpose in  
4 terms of correcting an engine block problem.

5 And -- but I think by its own hype, if you  
6 will, on the internet, it presents itself as a rather  
7 unique solution to a unique type problem. So in my  
8 view, it's unique in that sense.

9 THE COURT: You can ask him further about  
10 this when it's your chance for cross-examination.

11 MR. HIPPLE: Okay.

12 THE COURT: Go ahead, Mr. Berkowitz:

13 BY MR. BERKOWITZ:

14 Q Now, does something like a secret formula affect  
15 how you view the business and the cash flow that's  
16 generated from a product?

17 A Sure. Any business that has a particular  
18 uniqueness to it has typically a higher value just as a  
19 general proposition, so that if -- you know, using the  
20 classic example, if you're CocaCola and have the  
21 CocaCola formula, it's a very valuable thing to have  
22 the CocaCola formula, and that's not necessarily a  
23 patented product, but it's a secret formula and it's  
24 been a secret formula for many years.

25 So it's easy to understand that just having

Mr. Geisser - Direct

181

1 that type of secret formula that accomplishes a very  
2 specific task has the impact of increasing the value of  
3 that company or any company, and it kind of applies  
4 across the board in terms of when you look at the  
5 valuation of a company.

6 So, you do look at the intangible assets that  
7 are associated with it. Something like, for example, a  
8 hot dog stand that has nothing particularly unique  
9 associated with it and, therefore, the values would be  
10 relatively low.

11 But, as you deal with more sophisticated  
12 companies with more sophisticated products and so  
13 forth, the value of those companies would be increased  
14 accordingly, you know, depending on the number of  
15 patents and technologies they have and so forth.

16 In this particular company, we're dealing  
17 with what I'll describe as somewhat of a unique product  
18 that has several patents associated with it.

19 BY MR. BERKOWITZ:

20 Q Could you tell us your view of, I'll call it for  
21 lack of a better term, the business model? How would  
22 you classify the business model that SCIX conducted?

23 A The business model here is really very simple, and  
24 that's the certain beauty of having this type of  
25 product. There's no physical location that retails

Mr. Geisser - Direct

182

1 this product. As I understand it, it's almost  
2 completely sold over the internet.

3 So nowadays, when we have e-commerce like  
4 that we do, it doesn't require a physical space to have  
5 to be able to distribute the product. They don't  
6 manufacture the product because that's done by Colonial  
7 Chemical, so that's done on a subcontract basis. So  
8 you don't need -- you don't need a factory that has  
9 vats and chemicals and things like that. That's all  
10 done off-site.

11 So, what you have is just a point of  
12 distribution that receives the orders off the internet,  
13 packages the bottles, and ships them around the world  
14 presumably, to whoever needs this particular product.

15 So, the business model is very simple and  
16 straightforward, and the point of distribution is also  
17 very simple. You go on the internet, you put in your  
18 credit card number, or you have a -- I guess you can  
19 also do it with a remotely-created check I imagine and,  
20 therefore, the money comes directly to a bank account  
21 which we can see in the bank account records that we  
22 have available to us. The product gets shipped and  
23 everybody is presumably satisfied with the product.

24 So, it's a very simple business model. It  
25 requires very little capital to keep it going other

Mr. Geisser - Direct

183

1 than just the initial acquisition cost of the product.

2 Q And the initial acquisition cost, what are you  
3 referring to there?

4 A Well, I heard -- I heard yesterday during the  
5 course of Mr. Hipple's testimony that he paid something  
6 like \$2 million in order to obtain the formula for the  
7 Steel Seal product. So, I understand that to say that  
8 there was a value of at least \$2 million on the product  
9 at one point in time --

10 Q Okay.

11 A -- such that it would justify paying \$2 million for  
12 that process.

13 Q And could you categorize the profitability of this  
14 product by profit margin?

15 A I can. Can I use my report to do that?

16 Q Please do.

17 A Okay. Let me -- let me direct your attention to  
18 Exhibit B, if I could.

19 Q I'm sorry, did you say B?

20 A B, as in boy. And if I could just take a minute to  
21 explain to the Court exactly how this is laid out. And  
22 if I could, I think it would facilitate understanding  
23 on several different points that we're going to talk  
24 about.

25 Q I would appreciate if you would do that because I

Mr. Geisser - Direct

184

1 gave up my copy so it will help me catch up.

2 A Okay, it's --

3 Q Go ahead. I'm --

4 A It's Exhibit B and it's an exhibit called "Combined  
5 Vertical Analysis," and it includes "Brian Hipple,  
6 federal schedule C, which is SCIX and Steel Seal Pro  
7 for the period from 2006 to 2011, B.B.B. Management,  
8 and Complete Group, LLC, 2012 to 2013, Fragmentary."  
9 That's the title of the exhibit.

10 And what this does is this lays out the  
11 available records that we had -- we were provided with  
12 to take a look at in connection with trying to  
13 understand what was going on here.

14 There's two basic braces of information that  
15 are available in this particular schedule. And if you  
16 look at the top, it says "Brian Hipple, Schedule C."  
17 And then over to the right-hand side, it says,  
18 "Quickbooks Profit and Loss," and under that is  
19 "Complete Group and B.B.B. Management Group, LLC"  
20 combined.

21 Q Mr. Hipple, would those be the two exhibits we  
22 looked at just before the break that showed B.B.B.  
23 Management and Complete Group's profitability?

24 A Yes, it is. And if I recall correctly, you  
25 specifically made reference to the numbers that appear



Mr. Geisser - Direct

185

1 at the bottom of the page, net profit of 350,193,  
2 55,967, for a total of 406,160.

3 Q And that is for how long a period?

4 A That is for an eight-month period of time between  
5 October 2012 and May 2013.

6 Q So you could annualize that number if you spread it  
7 out?

8 A Yeah. So we did that in another -- different  
9 schedule.

10 Q Okay.

11 A Yeah. But if I could just come back to the  
12 schedule C analysis, this information, again, came from  
13 a Form 10 -- a schedule C from a Form 1040. So when  
14 you have an individual business, that's the way you  
15 report on a Form 1040.

16 And it's more limited in its information  
17 because when you have to file a 1040 you don't have a  
18 balance sheet, so you basically have the revenues and  
19 you have the expenses associated with the business and  
20 you produce a bottom line, which is -- forms the basis  
21 for what you pay taxes on basically.

22 Let me come back to the original question you  
23 asked in terms of the profitability of the company. If  
24 you look at the top line which says "Gross Receipts" --  
25 and I'm just going to read these off so we're all on

Mr. Geisser - Direct

186

1 the same page, literally.

2 You can see back in 2006, they reported gross  
3 receipts of 466,602; 2007, 412,085; 2008, 524,942;  
4 2009, 786,604; 2010, 868,545; and 2011, 1,249,065. So  
5 that you can see that there's a steady progression  
6 upward in terms of the volume of sales that's going  
7 through this particular business, the Steel Seal sales  
8 that are going through this business.

9 Now, Mr. Berkowitz, you asked me earlier, you  
10 know, talk about the profitability of the product.  
11 When we talk about the profitability of the product the  
12 typical calculation you go through is the selling value  
13 of the product and what it costs to manufacture that  
14 product or produce that product.

15 So in this case, the primary cost of the  
16 product becomes the chemical cost when they buy product  
17 from Colonial Chemical. I believe that is the next  
18 line. I say believe because we don't have the  
19 underlying detail, so when we're looking at these  
20 documents we're -- I'm trying to make a reasonable  
21 inference about what that cost would be. So imagining  
22 the cost, it would probably be the cost of the product  
23 that's being purchased.

24 So when we back out the cost of the product  
25 from the sales we see the gross profit that derives

Mr. Geisser - Direct

187

1 from that. And if we go across the gross profit line,  
2 we can see that back in 2006, it was 416,000, I'm going  
3 to round these off, 349,000, 399,000 in 2008, in 2009,  
4 574,000, in 2011, 586,000, and -- excuse me, 2010,  
5 586,000, 2011, 646,000, and then when we get to what  
6 I'll call the combined numbers after 2011, which is the  
7 Complete Group and B.B.B. Management and, again it is  
8 only for an eight month period of time, we're at  
9 616,000.

10 There's also another number that appears next  
11 to those gross profit lines and it shows the gross  
12 profit margin. And if you look across that same line,  
13 you see the numbers 89 percent, 85 percent, 76 percent,  
14 73 percent, 67 percent, and 52 percent, and 53 percent.

15 So that says to me that it's -- they're  
16 selling a product that has a relatively high profit  
17 margin associated with it, again, the difference being  
18 between the cost of goods sold and what it is being  
19 sold for.

20 Q Mr. Geisser --

21 A So it's a profitable product.

22 Q I'm sorry.

23 A It's a highly -- has a high gross margin to the  
24 product.

25 Q So if I told you that it costs \$1.50 a bottle for

Mr. Geisser - Direct

188

1 SCIX to buy the Steel Seal, the 16-ounce bottle, and it  
2 sold it somewhere between \$44.95 and 59.95, that we  
3 went through that calculation with Mr. Hipple, would  
4 that be what you would call a high profit margin?

5 A I would say that's a very high profit margin.

6 Q I'm sorry, I didn't mean to interrupt you.

7 A No, the only other thing I would add to that would  
8 be the cost of the packaging associated with it, you  
9 know, because you have to put it in a bottle, which  
10 costs something, or a can, whatever it's packaged in,  
11 and then you have the packaging costs associated with  
12 that. That's all costs of goods sold to deliver it to  
13 the end customer.

14 Q Okay.

15 THE COURT: That's included in your numbers  
16 here in costs of goods sold, that packaging?

17 THE WITNESS: These are the numbers that were  
18 produced to us.

19 THE COURT: Right.

20 THE WITNESS: So when you say they're my  
21 numbers, it's the information that was derived --

22 THE COURT: I didn't mean your numbers. I  
23 meant --

24 THE WITNESS: Yeah.

25 THE COURT: -- the numbers on your chart.

Mr. Geisser - Direct

189

1 THE WITNESS: Yes.

2 THE COURT: Yes.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: That includes the costs of goods  
5 packaging --

6 THE WITNESS: Yes.

7 THE COURT: -- yes. Okay.

8 BY MR. BERKOWITZ:

9 Q Did you produce any other types of calculations  
10 with these numbers?

11 A I did. Let me -- let me direct your attention now  
12 to the next exhibit in the report, which is Exhibit C.  
13 And Exhibit C is sort of a transitional document. The  
14 upper section of this essentially compresses what was  
15 on the prior exhibit in terms of showing the gross  
16 profits, excuse me, the gross receipts and the gross  
17 profit and the expenses that are associated with the  
18 business. And it shows net profit across the bottom  
19 line. Again, I'm just compressing down the prior  
20 exhibit, essentially.

21 Now, this document for the first time shows  
22 one other element, which will be key to the valuation  
23 that we did. And if you look at the bottom, it says  
24 "Information from Selected Analysis of Bank Records."  
25 And when you go across the bottom you see the number,

Mr. Geisser - Direct

190

1 558,534 in 2010, 608,542 in 2011, and 690,563 in 2012.

2 Q And what are you referring to when you say  
3 distributions?

4 A Okay. Now, what we did is -- we're kind of  
5 shifting gears a little bit to look at the valuation  
6 elements that are implicit in the business. One of the  
7 key things when you try to value a business that you're  
8 looking at is how much can the owners take home? It's  
9 sort of a fundamental process -- analysis of profit.  
10 How much can I take home? Why -- if I have this  
11 business and I operate it, what am I taking out of the  
12 business? And that's considered a distribution to the  
13 owners, essentially.

14 Q And where did you get these numbers for 2010, 2011,  
15 and 2012?

16 A These numbers came from our analysis of the banking  
17 records.

18 Q And could you tell us, and I don't want to get  
19 ahead of where you are, what did you do in terms of an  
20 analysis of the banking records?

21 A We were presented with records from Wachovia Bank  
22 and from FNB Bank -- I think it's FNB Bank, Newtown, if  
23 I'm not mistaken, and we took those records and we  
24 analyzed those records in good detail in order to  
25 ascertain what were the distributions that were being

Mr. Geisser - Direct

191

1 taken out of it?

2 Let me apply another term here, if I could,  
3 and that's a term that we find in the valuation world.  
4 It's called seller's -- it's called discretionary  
5 earnings, seller's discretionary earnings.

6 In other words, what is the profitability  
7 that's accruing to the business by the amount of the  
8 withdrawals that are being taken out of the company.  
9 And, ultimately, that's what we're working toward  
10 trying to determine, what is the distributions out of  
11 the company?

12 Q Now, the Wachovia Bank records, those were  
13 SCIX's --

14 A Correct.

15 Q -- records?

16 A Yes, SCIX records.

17 Q And then you mentioned the First National Bank of  
18 Newtown, FNB?

19 A FNB.

20 Q And that would be the Steel Seal Pro records?

21 A The SCIX records -- let me just set the stage here  
22 just a little bit. The SCI records at Wachovia, the  
23 Wachovia bank account was used up until the time there  
24 was the garnishment of the account. And it was after  
25 that time that the business seemed to shift over to the

Mr. Geisser - Direct

192

1 FNB account. So if I could direct your attention to  
2 Exhibit D in my report, and I'm going to -- I'm going  
3 to start by looking at the bottom line first, because  
4 these numbers at the bottom line because important in  
5 terms of what the valuation is going forward.

6 So, I'm going to start by pointing out if you  
7 look at the bottom of -- with 2010, you see the number  
8 558,534, which is the same number we had seen on the  
9 prior page. In 2011, again, 608,542, and in 2012,  
10 517,922, but when we analyze that, in other words, take  
11 that eight-month period of time and project over  
12 another four-month period of time, the number becomes  
13 690,563. So these numbers are very important in terms  
14 of our calculation of value.

15 Q And just to connect the two exhibits that we looked  
16 at, the 558 and 534, those were the distributions that  
17 you showed on the prior exhibit?

18 A Yes, and these -- the distributions are broken down  
19 into greater detail on this specific exhibit here.

20 Q And is this number based on your or your firm's,  
21 your view of the actual bank records?

22 A Yes, absolutely.

23 Q And what did you do? Did you go through check by  
24 check?

25 A We used the bank records, we went through the



Mr. Geisser - Direct

193

1 deposits, we went through the withdrawals, and came up  
2 with these numbers.

3 Q Okay. Tell us again what we're seeing, for  
4 example, in 2010 under SCIX.

5 A Okay. Let me first -- before I go into that  
6 detail, let me just point out the footnotes, which I  
7 think help the reader get through this. Under 2010, we  
8 have the footnote A which says, "The 2010 information  
9 is based on the summary prepared by the client from the  
10 Wachovia records account for October 2009 through  
11 September 2010. This 12-month period is used as a  
12 surrogate for the calendar 2010."

13 In other words, again, we only had for 2010  
14 everything stopped after the garnishment. So we went  
15 back to a period of 2009 to pick up a 12-month period  
16 of time.

17 For 2011 and '12, the information is based on  
18 the detailed analysis of the transactions from the  
19 Steel Seal Pro FNB account from December of 2010  
20 through February of 2011.

21 And then, you know, footnote C also notes  
22 that we had to analyze the period of time because we  
23 only had nine months of information available. So  
24 that's the way we produced it is it was putting  
25 together those sets of records that were available to

Mr. Geisser - Direct

194

1 us, the bank records, and that's what's scheduled out  
2 in this particular -- this is what's summarized in this  
3 Exhibit B that we have before us right now.

4 Q Did you subsequently when you reviewed the B.B.B.M.  
5 Quickbook records and the Complete Group Quickbook  
6 records that we saw earlier today in the exhibit, the  
7 profit you talked about in your prior exhibit where you  
8 annualized it, is it consistent with the distribution  
9 numbers here in terms of profitability?

10 A Well, these numbers tend to be higher because  
11 there's elements here that are not -- they're not quite  
12 the same. For example, when a loan gets paid off, a  
13 loan that gets paid off is not necessarily an expense  
14 of the company because it's capital. You know, so you  
15 have a different -- you have different elements that  
16 appear in the schedule.

17 Q Okay. On your I think it was Exhibit B you talked  
18 about the Complete Group profit of 350,000. Do you see  
19 that on the first page? You've got a \$406,000 profit  
20 for eight months?

21 A Yes.

22 Q And if you annualize that, what would the annual  
23 profit be from that if you were to project it out?  
24 It's two-thirds of a year, right?

25 A Yeah, I would have to do the math, but it's

Mr. Geisser - Direct

195

1 two-thirds of a year.

2 Q So --

3 A So you divide that number by --

4 Q So it would be about --

5 A -- you know, .66.

6 Q -- \$600,000?

7 A It would put the number somewhere around the  
8 \$600,000 level.

9 Q And is that consistent with the numbers that you're  
10 seeing from the reproduced records that you made?

11 A Yes, it is consistent.

12 Q Okay.

13 A Generally, yeah. Generally.

14 Q Okay. I'm sorry, I didn't mean to interrupt you if  
15 you were in the middle of something.

16 A That's okay.

17 Q Okay.

18 A So I'm going to go back to Exhibit D and talk about  
19 that some more if I could.

20 Q I'm sorry, did you say D?

21 A D, as in dog.

22 Q Okay.

23 A So when we went through the bank records, the  
24 detailed bank records, we identified those elements  
25 that we thought were distributions to the principals

Mr. Geisser - Direct

196

1 that are involved, the insiders, if you will, the  
2 officers, directors, and that included Brian Hipple and  
3 Clement Hipple and expenses that they were incurring on  
4 their personal account.

5 Q And how about Melissa Moreno? Did you see checks  
6 for her?

7 A I did, and that's listed in the schedule here. If  
8 you look about halfway down the schedule here, you can  
9 see that Melissa Moreno is also listed. She is the --  
10 you know, the mother -- I don't know how to describe  
11 it. She was Brian Hipple's --

12 Q Significant --

13 A -- common law wife or significant other, whatever  
14 you want to say.

15 Q And do you see --

16 A So she was getting distributions out of --

17 Q I'm sorry.

18 A -- the company as well.

19 Q Okay. And you see Teresa Hipple in 2010 also  
20 received money?

21 A Right. And why that appears is because that's a  
22 loan, okay? And when you look at a company's expenses,  
23 the loan is not necessarily an expense. The interest  
24 portion of a distribution would be an expense, but it's  
25 not an -- it's not an operating expense for the company

Mr. Geisser - Direct

197

1 in terms of the way we're doing this particular  
2 analysis because you can operate a company that has no  
3 loans associated where it's complete equity where you  
4 don't -- so it's not an operating expense of the  
5 company in that sense.

6 So that if you have -- if you were fully  
7 capitalized and didn't need any loans, you wouldn't  
8 have that as a deduction from the company. So in terms  
9 of valuing the product and the company, you would  
10 typically back that out.

11 Q Can you tell us how you determined what were the  
12 distributions? If you look under the column "payee,"  
13 are those what you consider checks or the like to  
14 someone as a distribution of free cash flow?

15 A Yes, these are the dis -- these are the items that  
16 we identified as being distributions to the principals  
17 of Steel Seal.

18 Q And could you go down the list and tell us what  
19 they are and how they were -- why they were classified  
20 as distributions?

21 A Sure. The first item here is A&C Building and  
22 Industrial Maintenance, and I think you've heard Mr.  
23 Hipple testify that that's his company and that he was  
24 receiving payments from these companies, the Steel Seal  
25 companies, to his company, A&C Building and Industrial

Mr. Geisser - Direct

198

1 Maintenance.

2 Q If it were a royalty, would that make any  
3 difference?

4 A Well, if it was a royalty, it would be an expense  
5 of the company that's paying the royalty.

6 Q But is it still a discretionary -- is it free cash  
7 flow for the company?

8 A Well, it's cash flow -- it depends on how you  
9 perceive this company, who owns the company. And in  
10 this particular case, we've seen a situation that it  
11 appears that Mr. Hipple is largely in control of many  
12 aspects of this company. So from that standpoint, it  
13 was a distribution that he's receiving.

14 Yes, it's -- he said it's a royalty. The  
15 records that we looked at did not -- do not identify it  
16 as a royalty. And I can refer you back to Exhibit B  
17 that we looked at earlier. There's not -- if you look  
18 at Exhibit B, which is the schedule C's, you don't see  
19 the word, "royalty," anywhere throughout that document.

20 So the fact that he's describing it now as a  
21 royalty is somewhat news to me because I've never seen  
22 royalty being used in the accounting records before.  
23 So in terms of the way we looked at it, it would be  
24 simply checks that were going to Clement Hipple, or  
25 actually, more specifically, to A&C Building and

Mr. Geisser - Direct

199

1 Industrial Maintenance, which he's identified as  
2 largely being checks to himself.

3 Q And how about the rest of them on the "payee"  
4 category?

5 A Okay, let me take the next one. The next one is  
6 American Express and it's a rather large category. And  
7 it's -- you have to keep in mind when we look at this  
8 category it's very important to understand that this --  
9 this is not an expense of this company because the  
10 credit cards are in the name of Scientific Chemical.

11 I believe you introduced a number of exhibits  
12 this morning into the record which show specifically  
13 that if you look at the top of the American Express  
14 records, they all say Scientific Chemical. So that's  
15 what's being run through this -- these companies, SCIX,  
16 Steel Seal Pro. It's a rather strange situation, quite  
17 frankly.

18 Q Did you see the business receipts or records which  
19 change your view that any of the American Express  
20 payments were, you know, business payments for SCIX?

21 A No. As we look at the records, the American  
22 Express records, there's a heavy preponderance of those  
23 expenditures that appear to be personal in nature. It  
24 looks like the principals are largely living out of the  
25 American Express records for the most part, and that --

Mr. Geisser - Direct

200

1 that's another reason why they call it a discretionary  
2 distribution to the owners.

3 The next item, if I could go down. Checks to  
4 Brian Hipple, I think that speaks for itself. The  
5 Buckingham Friends School, my understanding is that is  
6 Melissa Moreno's children.

7 Clement Hipple A and C, these were checks  
8 that were drafted to Clement Hipple. Doylestown  
9 Hospital, Dr. Bob Myson (ph), Dr. Reisenberg (ph), Elk  
10 Mountain, Flemington Infinity, these we identified as  
11 being primarily personal in nature. They're not --  
12 they don't make up the bulk of the expense. They're  
13 relatively small.

14 HAB is the Burkheimer Tax Service. It's a --  
15 so it's a personal tax payment to the Burkheimer  
16 Service. Again, that's not an expense of the company  
17 per se. Keystone Volvo, Melissa Moreno, we've talked  
18 about earlier, she's getting checks for something. And  
19 let me emphasize with respect to Melissa Moreno and all  
20 these checks, none of these checks are W-2 checks.  
21 These are not W-2 checks. These are just checks for  
22 round amounts, you know, 1,000, 2,000, \$3,000.

23 Q When you say W-2, are you referring to a payroll  
24 check?

25 A A payroll check. In other words, if somebody was



Mr. Geisser - Direct

201

1 working for a company and like money was due, right, we  
2 get a -- we get a payroll check and it's a -- and you  
3 get a W-2 at the end of the year. And, typically, it's  
4 an odd amount, you know, our paycheck.

5 Q Okay.

6 A These are round amounts that we're talking about  
7 now.

8 (Pause in proceedings.)

9 A Nevis Administrative Services, I don't know exactly  
10 what it was, but I understand that Mr. Hipple has some  
11 business in Nevis. PA Department of Revenue I believe  
12 is a tax payment. PA Department of Transportation is  
13 small. It's probably a car payment. Prudential we  
14 believe is a life insurance policy.

15 The Queen Oak (ph) Bank I understand is a  
16 mortgage on Brian's home, as I understand it.  
17 Sovereign Bank is a loan that was related to Brian and  
18 Melissa, so it's a personal item. The payments to  
19 Teresa Hipple that we talked about earlier, these are  
20 loan payments. These are not expenses that are  
21 associated with producing profits for the company. And  
22 the United States Treasurer, these are personal tax  
23 payments were made out of the accounts, IRS-type  
24 payments.

25 Q Sir, could you tell us what did you do with these

Mr. Geisser - Direct

202

1 numbers?

2 A Okay. So once we identified these discretionary  
3 earnings, which is the terminology that's used in the  
4 valuation world, I then know that there's databases  
5 that I can use where I can take these elements and I  
6 can apply other metrics to these elements to come up  
7 with a valuation. And if we flip back to Exhibit F, as  
8 in Frank this is where we do that application.

9 Q Do you want to take us through that?

10 A Sure. This is -- this is entitled, "Summary of  
11 Valuation Methodologies as of October 13th, 2010." And  
12 if you look at the top line there, it says, "Seller's  
13 discretionary earnings measured by distributions," and  
14 that's the numbers that we just looked at in Exhibit D.  
15 So it's exactly the same going across the bottom of the  
16 page, 558,000, 608,000, 690,000, and we did a  
17 three- year average of those numbers and we come up  
18 with 619,000.

19 Now, I have to explain a little bit about the  
20 database. There's a database that's available to the  
21 valuation world call BizComps (ph), and this is a  
22 standard database that's used by many people in the  
23 valuation world. It's typically smaller businesses  
24 that are involved in the database. The database gives  
25 you information on actual business transactions, in

Mr. Geisser - Direct

203

1 other words, actual sales of businesses, and it's  
2 categorized by business code.

3 So, that if we have a particular type of  
4 business, whether it's a manufacturing company or a  
5 barbershop or internet sales, we can go to a particular  
6 business code and we can look for businesses that are  
7 similar in nature in terms of their profile, the  
8 business profile, and that's exactly what I did in this  
9 particular case.

10 Let me refer you to now -- let me just ask  
11 you to flip to Exhibit G for just a second if I could.  
12 And the process that I'm describing is shown in Exhibit  
13 G, and that's labeled "Comparable Sales Information,  
14 Source BizComps."

15 So what we're trying to do here is to come up  
16 with essentially a fair market value valuation for a  
17 substantial equivalent value that's market-based. So  
18 when we look at companies that are similar in their  
19 coding system, and that coding system is shown under  
20 the SIC code.

21 If you look at the column that's second from  
22 the left. It says "SIC." That's Standard Industrial  
23 Classification code. Then there's a coding system  
24 called the NAICS, which is North American Industrial  
25 Classification System.

Mr. Geisser - Direct

204

1           So we're trying to get businesses that are  
2 similar in their profile. And we also take a look at  
3 the revenues that are being generated. In this case, I  
4 identified four businesses that were right around a  
5 million dollars in revenue.

6           And this has a number of metrics that are  
7 useful in doing a business valuation, and one of those  
8 metrics is SDE, price to SDE. And if you look sort of  
9 on the right-hand side of the page, you're going to see  
10 "Price to SDE." And there's a number of numbers that  
11 go down that page. And you see the number 292. Now,  
12 what that means is that if a business -- let me give  
13 you an example. If a business is sold --

14           THE COURT: Let me stop you. I'm sorry.  
15 Where's this 292? This is on G?

16           THE WITNESS: It's on G, yeah.

17           THE COURT: Where is that?

18           THE WITNESS: Your Honor, see the column  
19 where it says "Price SDE?" It's about just to the  
20 right of the middle of the page.

21           THE COURT: Yes, I see it.

22           THE WITNESS: Okay. And if you go down that  
23 column --

24           THE COURT: Okay, I have it.

25           THE WITNESS: Do you see --

Mr. Geisser - Direct

205

1 THE COURT: Thanks.

2 THE WITNESS: -- the number 292?

3 THE COURT: It's the average.

4 THE WITNESS: It's the average.

5 THE COURT: Okay.

6 THE WITNESS: So I took an average of the  
7 four transactions that I was --

8 THE COURT: Right.

9 THE WITNESS: -- able to identify.

10 THE COURT: Okay, thank you.

11 THE WITNESS: So this is a way of equating  
12 the selling price, in other words, the value of the  
13 business, with the seller's discretionary earnings. So  
14 to give you a simple example, if the selling price is  
15 \$1,000 and the owner of the business were to take out  
16 \$300, it would be, you know, ten -- it would be three  
17 divided by -- three divided by ten, so it's a little  
18 bit -- so it would be a little bit over three.

19 If I may make it easier, okay? Let me -- if  
20 the selling price is \$900, you can take out \$300, it  
21 would be a factor of three. So in this case, the  
22 number we come up with using that methodology is 2.92.

23 So in other words, these businesses,  
24 comparable businesses, are being sold at 2.92 times the  
25 seller's discretionary earnings or the distributions in

Mr. Geisser - Direct

206

1 this case. It's kind of an earnings per share kind of  
2 calculation if you can think of it that way.

3 So in simple terms, if you have, you know,  
4 \$100 profits and you're trying to sell the business,  
5 you would be selling it for approximately three times  
6 that number or \$300. So that's the same kind of  
7 methodology we're using here.

8 So we're saying how much did -- how much was  
9 taken out of the company in terms of distributions and  
10 how much would that be worth on the open market? And  
11 the answer that we came up with was 2.92. Again, it  
12 rounds to approximately three times. So it's selling  
13 for an earnings multiple of about three. That's the  
14 way you can think of it.

15 BY MR. BERKOWITZ:

16 Q Then can you tell us how you then applied this  
17 multiplier factor to the discretionary cash flow  
18 generated by the sale of Steel Seal?

19 A Sure, then let me flip back to Exhibit F now at  
20 this point.

21 (Pause in proceedings.)

22 A Okay.

23 THE COURT: I'm with you.

24 THE WITNESS: Okay. If you look at Exhibit  
25 F, you can see that we take that 2.92, the earnings

Mr. Geisser - Direct

207

1 multiple, the SDE --

2 THE COURT: Right.

3 THE WITNESS: -- and we apply it to the  
4 distributions for the company. And we do that for each  
5 respective year, 2010, '11, '12, and we come up with a  
6 three-year average, and so that's our valuation  
7 estimate, and so my conclusion, after having reviewed  
8 the composite numbers that we come up with for three  
9 years, I put a value on this company of \$1,750,000 for  
10 the cash flows that were being generated from the Steel  
11 Seal product. \$1,750,000 is the key number here.

12 BY MR. BERKOWITZ:

13 Q And are there any other types of adjustments that  
14 you would make? I take it that that's your opinion of  
15 the value of the cash flow generated by the sale of  
16 Steel Seal?

17 A Correct. This -- these are the cash flows of the  
18 underlying business. There's other adjustments that  
19 can be made, and one of those adjustments is to add the  
20 inventory on as a separate item. And, typically, when  
21 you look at these calculations they're adjusted for --  
22 if a business -- when you're buying or selling a  
23 business, you typically take out the excess cash  
24 because there's no point in buying cash.

25 Same thing with inventory. Inventory -- if

Mr. Geisser - Direct

208

1 there's an excess amount of inventory, that's also  
2 added to the value of the business because that becomes  
3 an immediately saleable product, so you can immediately  
4 sell that and turn it into cash. So, typically, that's  
5 added on to the value of the cash flows.

6 So in this particular case, it was not until  
7 after I issued this report that I became aware that  
8 there was significant amount of inventory that had been  
9 taken by Mr. Hipple when he took the cases of product  
10 that we talked about earlier this morning.

11 Q And were you here when this, my scribble that's up  
12 on the board, the calculations of the value of  
13 inventory?

14 A I was here, yes.

15 Q And do you see there's about \$250,000 of inventory  
16 depending on how you calculated it?

17 A I see the number 246,000 is up on that board, and I  
18 believe you added another element which brought it up  
19 to about \$300,000 in inventory.

20 Q That was a question of price between 44.95 and  
21 59.95?

22 A Well, I think you added on another level of bottles  
23 onto this calculation if my --

24 Q Correct, they were --

25 A -- recollection serves.



Mr. Geisser - Direct

209

1 Q -- eight-ounce bottles?

2 A These are the 16-ounce bottles that are up on the  
3 board, and I think you added on the eight-ounce bottles  
4 as well.

5 Q Yes, I did.

6 A So I think when you came back I think it came to a  
7 number something just north of \$300,000.

8 Q Okay.

9 A So to summarize, what we're trying to communicate  
10 here is that there's a value to the cash flows, that's  
11 the \$1,750,000. But in addition to the cash flows,  
12 there's also a value to inventory or any other, you  
13 know, hard assets that are taken at that point in time  
14 that are separate and apart from the operating  
15 business.

16 In this case, it would be my opinion that  
17 that \$300,000 of additional inventory should be added  
18 to this \$1,750,000 to come up with the value of the  
19 business.

20 Q So on --

21 A Calculated value of the business.

22 Q In October of 2010, when Clement Hipple foreclosed  
23 on all of the assets that comprised Steel Seal before  
24 we lose the patents and the business, what is your  
25 opinion of the value of those assets at the time he

Mr. Geisser - Direct

210

1 took them?

2 A My opinion is that the value of those assets would  
3 be the \$1,750,000, which appears on Exhibit F, plus the  
4 value of the inventory that was taken that was an  
5 immediately saleable product, so approximately, in  
6 round number, about \$2 million.

7 Q Now, did you notice anything in the records as of  
8 the time of the garnishment? The records go from  
9 Wachovia Bank to First National Bank when the business  
10 transitions from SCIX to Steel Seal Pro. Is there  
11 anything you saw in reviewing the bank records?

12 A Well, what was remarkable about that was that --  
13 more the continuation of the business more than  
14 anything else because when the Wachovia record -- when  
15 the Wachovia bank account ceased operation, then the  
16 FNB bank account opened up operations almost just  
17 shortly thereafter beginning, and there was just -- it  
18 looked almost like the same account going from Wachovia  
19 over to the FNB account in terms of the cash flows that  
20 were coming into the operation, types of expenses and  
21 distributions.

22 Q Could you say that the only difference was the bank  
23 account into which the money flowed?

24 A That's what it appeared to be from my -- yes. The  
25 answer is yes.

Mr. Geisser - Direct

211

1 Q So when this transition took place, when it was  
2 Wachovia Bank before the garnishment, the cash flowed  
3 into Wachovia Bank?

4 A Yes.

5 Q And then after the garnishment, the cash just  
6 flowed into another bank?

7 A Correct.

8 Q And that was the First National Bank?

9 A That's correct.

10 (Pause in proceedings.)

11 Q And did you look to see if there was any change  
12 after Brian Hipple passed away in terms of the  
13 transition of the business then? Do your records go  
14 that far?

15 A They do. Brian Hipple passed away in September of  
16 2012, and -- just give me one second. I just want  
17 to --

18 (Pause in proceedings.)

19 A Mr. Berkowitz, let me direct your attention to  
20 Exhibit E-3.

21 Q Okay.

22 (Pause in proceedings.)

23 Q Still looking. I don't have tabs.

24 (Pause in proceedings.)

25 A E-3 is labeled "FNB Business First Trust

Mr. Geisser - Direct

212

1 Account" --

2 Q Got it.

3 A -- "2012 Transactions."

4 Q Okay, got that.

5 A Okay. So when we looked at this account we saw  
6 that there were the normal Steel Seal transactions,  
7 certainly up through the time of his death. And then  
8 there was a period of time after September of 2012  
9 where we saw the credits continue to flow into the  
10 account. I think Mr. Hipple talked about that earlier  
11 today.

12 And we got to -- our records, our bank  
13 records, only went up through the end of December 2012.  
14 And at the end of 2012, according to the records that  
15 we have, we see that there was about \$197,725 in the  
16 account as of December 31st, 2012, and I'm picking that  
17 number up just so we are on the same page, literally.

18 If you look at the bottom of Exhibit 3, E-3,  
19 you can see that number, 197,725. So that was cash  
20 that was sitting in the bank at the end of December  
21 2012, and I believe it's the money was eventually taken  
22 by I want to say B.B.B. Management. I'm not quite  
23 sure.

24 Q Of Complete Group?

25 A The Complete Group --

Mr. Geisser - Direct

213

1 Q You're saying this is the garnishment of the  
2 Complete Group --

3 A I believe that that's --

4 Q -- on Steel Seal Pro?

5 A I can say that that was the money that was left in  
6 the account at that time, and I believe that was what  
7 was eventually taken.

8 Q By Complete Group?

9 A By Complete Group.

10 Q Okay. Would that affect your valuation at all?

11 A Not directly because the valuation that we're  
12 looking at is really back as of October of 2010, you  
13 know, the point of valuation.

14 But, it gives an indication of the overall  
15 value that we're dealing with here in the sense that  
16 we're dealing with a profitable company that's got  
17 money and cash in the bank at a given point in time.

18 So it's more significant from the standpoint  
19 of just showing there's a significant amount of money  
20 at that point -- that very point in time. It's not  
21 directly related to the valuation per se.

22 Q Thank you. Mr. Geisser, did you ever have an  
23 opportunity to review an expert report prepared on  
24 behalf of Mr. Hipple, the defendant?

25 A I did.

Mr. Geisser - Direct

214

1 Q And could you tell me what did you find in that  
2 report?

3 A Well, that report takes a lot of -- a lot of the  
4 focus of that report has to do with my failure to use  
5 an opinion of value approach. And my direct answer to  
6 that is that it's just -- it wasn't possible to do an  
7 opinion of value in this case. We simply did not have  
8 the records that would make that doable. So it was not  
9 an option that was available to me, and I did the best  
10 that I could with the available records.

11 Q And that's why you did the calculation of value?

12 A And that's why I did the calculation of value. If  
13 I did an opinion -- if I tried to do an opinion of  
14 value, it would have so many caveats all over the place  
15 and disclosures about what information was not  
16 available, it would become meaningless in terms of what  
17 I was trying to convey.

18 So, I felt that I was being more -- producing  
19 a more effective product, if you will, and a more  
20 realistic product using this approach, the calculation  
21 of value, and just saying these are the records that  
22 were available, and if you apply these methodologies,  
23 this is what you come up with in terms of the valuation  
24 for the stream of income associated with the Steel Seal  
25 businesses.

Mr. Geisser - Direct

215

1 Q And if I could just summarize your opinion, you  
2 were of the conclusion that it was worth somewhere just  
3 in excess of \$2 million in October of 2010?

4 A Correct.

5 Q And that was a calculation of value?

6 A That's a calculation of value.

7 Q And that's done in accordance with the standards of  
8 the AICPA?

9 A It's done in accordance with the AIC standards for  
10 statements on valuation standards number one.

11 Q Now, could the defendants have done a calculation  
12 of value or an opinion of value to provide a number  
13 different than yours?

14 A Sure, absolutely. They had access to certainly the  
15 same records that I had. They could have asked the  
16 defendant for additional records. They could have  
17 interviewed the defendant. They could have -- they had  
18 access to much more information than I had available to  
19 myself.

20 Q Do you have any view as to why they didn't do a  
21 number to compete with your number?

22 A In my opinion, the reason why they didn't, it would  
23 be a number that would be a big number and it would not  
24 work to their client's benefit, basically. That's my  
25 opinion.

Mr. Geisser - Direct

216

1 Q Thank you, Mr. Geisser. I have no further  
2 questions.

3 THE COURT: Let's take a break. I'll give  
4 you a ten minute break before you begin  
5 cross-examination, okay. Thanks.

6 (Recess, 2:41 p.m. to 2:49 p.m.)

7 THE COURT: Please be seated. Thanks. You  
8 may proceed, Mr. Hipple.

9 MR. HIPPLE: Thank you, Your Honor. I'm just  
10 looking for one report, Your Honor.

11 THE COURT: All right.

12 (Pause in proceedings.)

13 MR. HIPPLE: (inaudible) waste of time,  
14 Your Honor, I'll give you the copy of what I have  
15 outside of the books. This is a copy of his report.

16 THE COURT: Oh, okay.

17 MR. BERKOWITZ: Mr. Hipple's?

18 MR. HIPPLE: Yeah, mine.

19 MR. BERKOWITZ: I'm sorry, Mr. Geisser's?

20 THE WITNESS: Yeah.

21 MR. BERKOWITZ: The Judge has --

22 THE COURT: I have a copy.

23 MR. BERKOWITZ: -- Mr. Geisser's report.

24 MR. HIPPLE: Oh, you already have one?

25 THE COURT: Thank you very much, yes.



Mr. Geisser - Direct

217

1 MR. HIPPLE: Okay. We're ready to go then.

2 (Pause in proceedings.)

3 CROSS-EXAMINATION

4 BY MR. HIPPLE:

5 Q Hello, Mr. Geisser.

6 A Good afternoon, Mr. Hipple.

7 Q Bill Pederson will be helping me and assisting me  
8 in the language, okay?

9 A Could you speak up a little bit? I just want to  
10 make sure I hear you.

11 Q How about now? Can you hear it if I talk into the  
12 mike?

13 A Thank you very much. Thank you.

14 Q Okay. He'll be helping me with the language and  
15 the spelling, okay, as far as the cross-examination is  
16 concerned. Okay.

17 The first question is the opinion you provide  
18 in your report is in conclusion in my opinion based on  
19 the records available and the statements assumptions  
20 reason equity equivalent value for the transaction of  
21 SCIX assets as of October 13th, 2010, would have been  
22 1,750,000, is that correct?

23 A If I understand your question, my opinion is the  
24 reasonable equivalent value would be \$1,750,000.

25 Q All right. All right. Directing your attention to

Mr. Geisser - Cross

218

1 page four of your CV --

2 A You said my CV? Did I hear that correctly?

3 Q Yeah, CV.

4 THE COURT: Is that attached to your report?

5 MR. HIPPLE: That's your --

6 THE WITNESS: There's an old CV --

7 MR. HIPPLE: -- report.

8 THE WITNESS: -- attached to my report, yes.

9 THE COURT: Oh, that's at the end. Okay.

10 BY MR. HIPPLE:

11 Q Under Exhibit 1?

12 A Exhibit I.

13 Q Exhibit I.

14 THE COURT: On page four? What page did you  
15 say, Mr. Hipple?

16 MR. HIPPLE: It's actually the last page,  
17 Your Honor.

18 THE COURT: Next to the last page?

19 MR. HIPPLE: The last.

20 THE COURT: The last page.

21 MR. HIPPLE: Page four, the last page of it.

22 THE COURT: Okay.

23 BY MR. HIPPLE:

24 Q Those are the cases in which you have given  
25 testimony as an expert witness, correct?

Mr. Geisser - Cross

219

1 A Those are the cases where I've given expert  
2 testimony since 2008 up through the date of this  
3 report.

4 Q Most of the testimony you have been has been by  
5 deposition, right?

6 A I think you would have to take it one at a time.  
7 There's deposition testimony. There's also trial  
8 testimony there as well.

9 Q I mean prior to trial testimony.

10 A I'm sorry, I couldn't hear you.

11 Q Prior to the trial testimony. Most of your  
12 testimony has been by deposition, correct?

13 A Mr. Hipple, I've testified 60 or 70 times in  
14 different cases.

15 Q No, I mean this case. I'm speaking of this case.

16 A In this case, I was deposed. In this case, yes.

17 Q Is it true that in none of these cases you provided  
18 an expert opinion as to whether a transfer was made in  
19 exchange for reasonably equivalent value, right? Let  
20 me go -- let me go to your deposition, 132-20.

21 A You're directing me to page 132? Is that what I  
22 heard?

23 Q Yeah, 132-20. Page 132.

24 (Pause in proceedings.)

25 A I have it.

Mr. Geisser - Cross

220

1 Q I don't.

2 (Pause in proceedings.)

3 Q Question, "What other time before this engagement  
4 -- what other time before this engagement have you ever  
5 been asked to provide an expert opinion as to whether  
6 the transfer was in exchange for a reasonable equity  
7 value?" Your answer?

8 (Pause in proceedings.)

9 Q Could you read your answer, please?

10 A I'm sorry, I was looking at the wrong page.

11 Q Okay. I'm sorry.

12 A You're on page 132, line?

13 Q Okay, 132. It starts on line 20, okay?

14 (Pause in proceedings.)

15 A I see it. My answer on page 133 at line two, "It  
16 doesn't come to mind right now for me. I have done  
17 some bankruptcy work. I'm trying to think back over  
18 those issues, and I just don't have that particular  
19 narrow focus in terms of what I'm thinking about right  
20 now."

21 Q So, basically, that's a no, right?

22 A It meant I didn't recall that -- it was a very  
23 narrow question that was asked, and I did not recall  
24 something that was responsive to that narrow question.

25 Q Do you have an answer now?

Mr. Geisser - Cross

221

1 A My answer would not change.

2 Q So, basically --

3 A It's the same answer.

4 Q Okay. Also, 133, line 22?

5 A Page 133, line 22 --

6 Q Line 22. Let me see.

7 (Pause in proceedings.)

8 Q Okay. It's the one that starts with line 16.

9 "Fair enough. Do you recall ever providing an opinion  
10 in the court on the issue of whether there was an  
11 exchange of reasonable equity value?" Your answer?

12 A "No, I don't recall that."

13 Q Now, you agree that notwithstanding, your opinion  
14 on page four of your report, you do not actually define  
15 reasonably equity value -- reasonably equivalent value  
16 anywhere in your report, do you?

17 A No, I do not. I use that terminology, which was  
18 the same terminology that was used I believe in the  
19 complaint in various pleadings that I read. So I  
20 was -- I was responding to the valuation in that  
21 context.

22 Q In fact -- and, in fact, the definition of that  
23 term is something beyond your expert, right --  
24 expertise, right?

25 (Pause in proceedings.)

Mr. Geisser - Cross

222

1 A Mr. Hipple, that is a statutory term. I discussed  
2 that with Mr. Berkowitz, who is the lawyer in this  
3 in this case. I explained -- we discussed the nature  
4 of what was required. I explained what I could do and  
5 I explained what the end product was going to be in  
6 terms of the opinion that I was going to render that  
7 was going to be in the nature of a fair market value  
8 type opinion which would equate the value of what was  
9 taken in October of 2013. And he indicated to me that  
10 that would meet the reasonably equivalent standard that  
11 was delineated in the Pennsylvania statutes or the  
12 appropriate statutes. A So that's as far as I went  
13 with it.

14 I understand that it's something that's open  
15 to some definition and some interpretation, and again,  
16 I explained what I was doing and how I was doing it,  
17 and I understood that this was the appropriate way to  
18 go about it.

19 Q Okay. But is the answer yes or no? Is expertise  
20 above that?

21 THE COURT: What's the question? I'm sorry?

22 MR. HIPPLE: Okay.

23 BY MR. HIPPLE:

24 Q And, in fact, the definition of that term is  
25 something beyond your expertise, correct? It is beyond

Mr. Geisser - Cross

223

1 your expertise?

2 A It's a legal term. I was relying on Mr. Berkowitz  
3 to -- when I gave him -- explained to him what I could  
4 do and how I could do it and what the end product was  
5 from a valuation standpoint.

6 He indicated to me that it was responsive to  
7 the statute the way it was written. I didn't feel like  
8 I needed to undertake a legal analysis of that, which  
9 is beyond the scope of what -- I'm not a lawyer.

10 Q So, basically, what you're saying is Mr. Berkowitz  
11 told you what to do?

12 A That's certainly not what I'm explaining. I'm  
13 explaining to you that we're dealing with a legal term,  
14 a statutory term. There's case law that stands behind  
15 statutory terms. I explained from a valuation  
16 standpoint what I could do, the procedures that I would  
17 apply, and the end result that I would come up with.

18 My understanding was that that was  
19 appropriate for reasonably equivalent value. It was a  
20 fair market value type valuation because we are using a  
21 market approach. When we use comparables like I used,  
22 it's essentially saying there were transactions in the  
23 marketplace that occurred.

24 And if we apply that same standard to those  
25 market-based transactions, to the transactions that are

Mr. Geisser - Cross

224

1 involved in this particular case, the Steel Seal case,  
2 that you -- the equivalent is essentially a fair market  
3 value standard because I'm using a market approach to  
4 valuation. My understanding is that that's what was  
5 appropriate to be responsive to the statutory language.

6 (Pause in proceedings.)

7 Q Could you give me the definition of "reasonable  
8 equivalent" -- "fair market value?"

9 A "Fair market value" has many definitions. The most  
10 classically defined standard of "fair market value" is  
11 in revenue ruling 5960, which speaks to a willing buyer  
12 and willing seller not under a compulsion to buy or  
13 sell.

14 (Pause in proceedings.)

15 Q All right. In your deposition, page 150, number  
16 ten.

17 (Pause in proceedings.)

18 A Page 150, line ten, I have it.

19 (Pause in proceedings.)

20 A It starts off in the middle of the question.

21 Q Okay.

22 MR. HIPPLE: Would it help if he read the --  
23 would it be more helpful because of my reading? No?

24 THE COURT: No, you have to do it.

25 MR. HIPPLE: Okay.



Mr. Geisser - Cross

225

1 BY MR. HIPPLE:

2 Q All right. "Was that an assumption that you were  
3 asked to make, that whatever number you came up with  
4 was going to be reasonably equivalent value to the  
5 transaction that was made?" Mr. Berkowitz objected.

6 MR. BERKOWITZ: Your Honor, there was an  
7 objection made as to the form of the question at the  
8 deposition.

9 THE COURT: What's the -- what's the problem  
10 with the form? It's leading?

11 MR. BERKOWITZ: I don't even remember at this  
12 point.

13 THE COURT: All right, I'll overrule the  
14 objection. I'll permit it.

15 MR. BERKOWITZ: Okay.

16 THE COURT: You can answer it. Do you want  
17 it repeated, Mr. Geisser?

18 THE WITNESS: Let me go back because --

19 THE COURT: Yes.

20 THE WITNESS: -- he's taking it out --

21 THE COURT: It's the deposition.

22 THE WITNESS: -- Well, it's out of context  
23 too, so I --

24 THE COURT: All right, go ahead.

25 THE WITNESS: -- need to pick up the context

Mr. Geisser - Cross

226

1 here.

2 (Pause in proceedings.)

3 BY MR. HIPPLE:

4 Q 151, eight.

5 (Pause in proceedings.)

6 A Mr. Hipple, let me direct your attention to my  
7 answer. Let me back up and state the question in its  
8 totality so we avoid a little bit of confusion.

9 "Question: I don't want to know any  
10 conversation between you and Mr. Berkowitz. Was that  
11 an assumption that you were asked to make that whatever  
12 number you came up with was going to be reasonably  
13 equivalent to the transfer that was made?"

14 "Mr. Berkowitz, "Objection to the form."

15 I responded, "I'll repeat what I already  
16 said. I was asked to come up with a value for the  
17 income stream. The context for that assignment was to  
18 establish reasonably equivalent value as a legal  
19 concept. I'm not a lawyer, so my reliance on whether  
20 to fit the bill to accomplish the goal was something  
21 that Mr. Berkowitz, as counsel, had to decide."

22 Q So, again, Mr. Berkowitz basically told you what he  
23 wanted?

24 A No, he simply explained to me the concept. And  
25 what we do as forensic accountants, there's oftentimes

Mr. Geisser - Cross

227

1 that we come across issues that cross into the type of  
2 work that we do. It's not an uncommon thing that we  
3 would go to counsel and say explain to me the standard  
4 that we need to use here. Explain to me the underlying  
5 law that we need to apply.

6 And that's all that happened here is that  
7 this is a term, statutory term, it's a statutory term  
8 that has a specific meaning presumably under the  
9 statutory law and under case law.

10 Mr. Berkowitz is in a much better position as  
11 a lawyer to be able to explain to me what was needed  
12 under the circumstances. I explained to him the  
13 process that I was going to use and there was going to  
14 be a -- I was going to come up with essentially a fair  
15 market value appraisal of the SCI business as of  
16 October 2013.

17 He said that that -- he indicated to me that  
18 that was appropriate to meet the standard under the  
19 statute. And that's -- so it was no an assumption. It  
20 was based on an explanation of the law that was given  
21 to me.

22 If you have a different understanding of the  
23 law, then, you know, we can talk about that. But my  
24 understanding was that what I did was appropriate to  
25 apply a fair market value standard of value to the

Mr. Geisser - Cross

228

1 assets and income stream as of October 31st -- as of  
2 October 2013.

3 THE COURT: You meant '10?

4 THE WITNESS: Excuse me.

5 THE COURT: You meant '10?

6 THE WITNESS: '10. I meant '10.

7 THE COURT: Right.

8 THE WITNESS: Thanks.

9 THE COURT: Right.

10 BY MR. HIPPLE:

11 Q All right. And do you not -- okay. Do you not  
12 even know whether the concept of reasonably equivalent  
13 value ever takes fair market value into consideration?  
14 Your deposition, 151-15.

15 Question, "Do you know whether the concept of  
16 reasonable equivalent value takes into consideration  
17 fair market value?" Mr. Berkowitz objects, and your  
18 answer?

19 A What's your question? I'm sorry.

20 Q The question is on page 151 -- 151-10.

21 THE COURT: Do you want him to read his  
22 answer to the question in the deposition?

23 MR. HIPPLE: Yeah. It was 151-15 was the --

24 THE COURT: Why don't you -- Mr. Geisser, why  
25 don't you read the question and give him your answer?

Mr. Geisser - Cross

229

1 THE WITNESS: Sure.

2 THE COURT: And if you want to explain, you  
3 can further if you want.

4 THE WITNESS: I understand. Question, "Do  
5 you know whether the concept of reasonably equivalent  
6 value takes into consideration fair market value?"

7 "Mr. Berkowitz, Objection to the form of the  
8 question to the extent that you are asking a legal  
9 conclusion."

10 By Ms. Bowman, "Question: "Do you know one  
11 way or the other?" Answer, "I would say I'm not sure."  
12 "Okay. I don't" -- answer, "I don't want to answer  
13 that."

14 "Question: Can I direct your attention to  
15 the first page of your report under the introduction  
16 and the background section in the third paragraph, and  
17 I'm looking for the second sentence which states, 'The  
18 complaint also alleges that Brian Hipple permitted  
19 Clement Hipple to repossess SCIX assets based on the  
20 debt purportedly owed to Clement Hipple, and the  
21 Complete Group is now in possession of those assets,  
22 which were made without the exchange of reasonable  
23 equivalent value,' and the phrase, 'were made without  
24 the' -- the phrase 'remained without the exchange of  
25 reasonably equivalent value,'" ends the sentence.

Mr. Geisser - Cross

230

1 "That section in the quotations, is there a  
2 reason why it's in quotes?" Answer, "I was quoting  
3 directly from the complaint."

4 (Pause in proceedings.)

5 Q And you would agree that the fair market value of  
6 any particular asset would be what a willing buyer and  
7 a willing seller would agree is the price, correct?  
8 And that's your deposition, 224-20.

9 A Deposition page 224? Is that what I heard you say?

10 Q Yeah, 224, 20.

11 MR. HIPPLE: I guess I should just go to the  
12 deposition first, Your Honor, right? That would be  
13 better?

14 THE COURT: Yes.

15 MR. HIPPLE: Oh, okay. Sorry, Your Honor.

16 THE COURT: No problem.

17 THE WITNESS: I'm looking at page 224. Could  
18 you just point me to a line, please?

19 MR. HIPPLE: 20.

20 THE COURT: You want him to read the question  
21 and his answer? Okay, why don't you do that, Mr.  
22 Geisser, please? Read your -- read the question and  
23 your answer.

24 THE WITNESS: Sure. Page 224, line 20,  
25 "Question: "Okay. Can those -- if just assets are

Mr. Geisser - Cross

231

1 transferred, are there ways to determine the fair  
2 market value of just those assets?

3 "Answer: Sure."

4 BY MR. HIPPLE:

5 Q Keep going, 225-17, keep going.

6 A "Question: "Okay. And would one consideration be  
7 the demand for those particular assets in the open  
8 market?

9 "Answer: Sure could be.

10 "Question: And what a willing buyer -- what  
11 somebody would be willing to pay and what somebody  
12 would be willing to sell for those particular assets,  
13 would there be another way to put a fair market value  
14 on those -- on the assets?

15 "Answer: The definition of 'fair market  
16 value.'

17 "Question: Would that be the fair market  
18 value of the assets?" Excuse me.

19 "Question: Would that be the fair market  
20 value of those assets, correct?

21 "Answer: Willing buyer, willing seller,  
22 neither being under compulsion to buy or sell."

23 Q Okay, that's good. Okay, this is a tough one. All  
24 right.

25 (Pause in proceedings.)

Mr. Geisser - Cross

232

1 MR. HIPPLE: Objection to testimony. Ask  
2 that opinion be struck. Cannot give an opinion to  
3 reasonable degree of professional certification --  
4 certain failure to provide such opinion in report.  
5 Nowhere in the report does say that any opinion offered  
6 is given to reasonable degree of professional  
7 certainty, nowhere in the report.

8 THE COURT: Mr. Berkowitz, do you want to  
9 respond to that objection?

10 MR. BERKOWITZ: Your Honor, I think Mr.  
11 Geisser has testified with professional certainty as to  
12 the value of the assets that were transferred. I don't  
13 recall whether those particular magic words were used,  
14 but I will on cross-examination or redirect, see if  
15 those words need -- want to be in the record, I put  
16 them in the record.

17 THE COURT: Okay. So I'll defer ruling on  
18 that objection until after the conclusion of Mr.  
19 Geisser's testimony. You may proceed. Go ahead, Mr.  
20 Hipple. Any other questions? We're going to rule on  
21 that later.

22 MR. HIPPLE: Okay. Cannot extrapolate that  
23 to a reasonable degree of professional certainty. Use  
24 the term REV, reasonable equivalent value, and option  
25 -- opinion and admits does not know what the term means



Mr. Geisser - Cross

233

1 and admits that the documents that relies on our  
2 fragmentary. Not only does not certain, but  
3 inclusive -- includes a CYA in the report. Okay?

4 THE COURT: Do you understand that?

5 MR. HIPPLE: Objection to any assumptions.

6 THE COURT: Mr. Pederson --

7 MR. PEDERSON: Yes?

8 THE COURT: -- I'll permit you to read that.  
9 Why don't you start --

10 MR. PEDERSON: Do you want me to back up?

11 THE COURT: Start from the beginning, yes,  
12 please.

13 MR. PEDERSON: Yes, Your Honor. Further,  
14 cannot extrapolate that to a reasonable degree of  
15 professional certainty that --

16 THE COURT: Yes, speak up, Mr. Pederson.

17 THE WITNESS: Speak up and slow down  
18 because --

19 THE COURT: Yes.

20 THE WITNESS: -- I can't understand you.

21 (Pause in proceedings.)

22 THE COURT: Go ahead. Take your time.

23 MR. PEDERSON: Certain cannot extrapolate  
24 that to a reasonable degree of professional certainty,  
25 use of the term, REV, an opinion, and admits does not

Mr. Geisser - Cross

234

1 know what that term means and admits that documents  
2 that relies on are fragmentary.

3 THE COURT: I think there's a compound  
4 question there. Why don't you do one at a time?

5 MR. PEDERSON: Okay.

6 THE COURT: There's multiple thoughts or  
7 questions there.

8 MR. PEDERSON: There are two.

9 MR. BERKOWITZ: Was that an objection?

10 THE COURT: Well, let -- I made my own  
11 objection.

12 MR. BERKOWITZ: Okay.

13 MR. PEDERSON: Okay.

14 THE COURT: I'm just telling him that it  
15 should be -- I want to --

16 MR. PEDERSON: There are two parts of this,  
17 Your Honor.

18 THE COURT: There's many parts to that, so  
19 let's do one at a time and then if you want to object,  
20 you can.

21 MR. BERKOWITZ: I wasn't objecting.

22 THE COURT: No.

23 MR. BERKOWITZ: I thought that was an  
24 objection.

25 THE COURT: Yes, I'm not sure if it's a

Mr. Geisser - Cross

235

1 question or an objection. Is it a question?

2 MR. PEDERSON: It follows the objection, Your  
3 Honor.

4 THE COURT: All right. Then why don't you  
5 state the objection then again?

6 MR. PETERSON: Okay. "Objection to  
7 testimony. Ask that opinion be struck. Cannot give an  
8 opinion to a reasonable degree of professional  
9 certainty. Failed to provide such opinion in report.  
10 Nowhere in report does it say that any opinion is  
11 offered given to a reasonable degree of professional  
12 certainty. Further" --

13 THE COURT: All right, we already covered  
14 that. We're going to defer on that until after his  
15 testimony. Go ahead.

16 MR. PETERSON: "Further, cannot extrapolate  
17 that to a reasonable degree of professional certainty  
18 use of the term REV, reasonably equivalent value, an  
19 opinion and admits does not know what that term means."  
20 I'll stop there.

21 THE COURT: Mr. Berkowitz?

22 MR. BERKOWITZ: Your Honor, if I could  
23 respond to --

24 THE COURT: Sure.

25 MR. BERKOWITZ: -- the objection, we'll deal

Mr. Geisser - Cross

236

1 with the reasonable uncertainty --

2 THE COURT: Right.

3 MR. BERKOWITZ: -- issue. But with respect  
4 to the term, reasonably equivalent value, I would  
5 represent to the Court that that is a statutory term  
6 and that will be the Court's job to determine whether  
7 the transfer of the SCIX assets from SCIX to Clement  
8 Hipple in exchange for a \$210,000 note was reasonably  
9 equivalent value. That is, I believe, a legal  
10 conclusion for the Court.

11 THE COURT: All right. I'll overrule the  
12 objection.

13 MR. PEDERSON: All right, the second part of  
14 that --

15 THE COURT: Is this an objection or a  
16 question?

17 MR. PEDERSON: It's part of the objection.

18 THE COURT: All right.

19 MR. PEDERSON: "And further, that the expert  
20 admits that the documents that it relies on are  
21 fragmentary."

22 THE COURT: Go ahead.

23 MR. BERKOWITZ: Could I respond, Your Honor?

24 THE COURT: Right.

25 MR. BERKOWITZ: I believe the testimony of

Mr. Geisser - Cross

237

1 the witness was that the records produced by the  
2 defendants was fragmentary, but that he relied on more  
3 than just those records. He had relied on a  
4 substantial quantity of bank records from Wachovia Bank  
5 and First National Bank --

6 THE COURT: Right.

7 MR. BERKOWITZ: -- and he applied his  
8 forensic accounting skills to rebuild the financial  
9 records that weren't produced.

10 THE COURT: Right. I'll overrule the  
11 objection. I mean the standard is the defendant can  
12 object that the -- excuse me, the plaintiff can object  
13 that the -- the defendant can object that the  
14 plaintiff's expert only relied on fragmentary records,  
15 and that's really because the defendant produced  
16 fragmentary records. In that situation, an expert  
17 never could give an opinion.

18 So he did the best he could based on all the  
19 records that were provided by the defendant. So I'm  
20 going to overrule the objection. If anything, that  
21 goes to the weight of his testimony.

22 (Pause in proceedings.)

23 MR. HIPPLE: Your Honor, I'm going to  
24 introduce something now that Mr. Berkowitz received,  
25 okay, and in plenty of time?

Mr. Geisser - Cross

238

1 THE COURT: Why don't you show it to Mr.  
2 Berkowitz?

3 (Pause in proceedings.)

4 MR. BERKOWITZ: I do remember this letter.

5 MR. HIPPLE: Should I give a copy to Your  
6 Honor?

7 MR. BERKOWITZ: Oh, if you would like to see  
8 it, Your Honor.

9 THE COURT: Yes. Let's mark it as Exhibit D  
10 what? What do you want to mark it? Do you have a  
11 number you want to put on this, Mr. Hipple?

12 MR. HIPPLE: Yeah, let's start -- we'll start  
13 at the 500s. He's at the 200s.

14 THE COURT: All right.

15 MR. HIPPLE: D-500.

16 THE COURT: D-500, all right.

17 MR. HIPPLE: That's my last copy of that.

18 (Pause in proceedings.)

19 MR. BERKOWITZ: Your Honor, I do recall  
20 receiving this letter. On May 15th, 2014, a number of  
21 Quickbooks records were produced well after the  
22 discovery cut off and almost a year after Mr. Geisser's  
23 report. They were never presented as a potential  
24 exhibit in the case and I would --

25 THE COURT: This was well after the discovery

Mr. Geisser - Cross

239

1 deadline was passed?

2 MR. BERKOWITZ: Oh, a year passed that time  
3 Mr. Geisser produced his report.

4 THE COURT: Right. Okay.

5 MR. BERKOWITZ: And they were not put in the  
6 exhibit binders, and I would have objected to them had  
7 they been offered at that point, and I would object to  
8 any use of them.

9 THE COURT: Mr. Hipple, this is a letter from  
10 Ms. Bowman, your former attorney. Mr. Berkowitz has  
11 represented that these documents were turned over to  
12 him on May 15th, 2014, well passed the discovery  
13 deadline and well passed the submission of expert  
14 reports.

15 Mr. Berkowitz said it's over a year between  
16 the time that the expert reports were filed with the  
17 Court or at least -- not filed, but at least served on  
18 the opposing side and the time that these documents  
19 were produced. Is that right, do you know?

20 MR. HIPPLE: Yes, that is correct. I believe  
21 that is correct, Your Honor, okay, because the -- yes,  
22 that is correct.

23 THE COURT: All right. Well, we have  
24 deadlines and discovery deadlines and deadlines for  
25 expert reports and production of documents. I find

Mr. Geisser - Cross

240

1 that these documents were produced well beyond the  
2 deadline and I'm going to preclude the use of those  
3 documents?

4 MR. HIPPLE: Even though his documentation  
5 was fragile?

6 THE COURT: Well, he --

7 MR. HIPPLE: Fragmented.

8 THE COURT: I understand, based on his  
9 testimony that he relied on all the documents that the  
10 defendants produced prior to the deadline. And that  
11 was proper for him to do that and he did the best he  
12 could based on the documents produced by the defendant.

13 The fact that a year later, after the expert  
14 reports were already submitted, further documents came  
15 to light, it's beyond the rules established by the  
16 judge in this case, Judge DuBois, and it's not in  
17 compliance with his order, scheduling order, or with  
18 the Rules of Civil Procedure, and we can't operate in  
19 that way, so I'm going to preclude that.

20 (Pause in proceedings.)

21 MR. PEDERSON: Am I reading, Your Honor?

22 THE COURT: Sure.

23 MR. PEDERSON: All right.

24 THE COURT: Read loudly, please. Is this an  
25 objection or is this a question?



Mr. Geisser - Cross

241

1 MR. PEDERSON: No, we're moving on.

2 THE COURT: Okay

3 (The questions are being read by Mr.

4 Pederson.)

5 BY MR. HIPPLE:

6 Q I'm showing you your report. This is the report  
7 your prepared in connection with this litigation? You  
8 already have the report. Okay. And it's dated June  
9 25, 2013? Sorry, that was a question.

10 A Yes.

11 Q It's more than two years ago, correct?

12 A Correct.

13 Q Since June 25, 2013, you have not issued any  
14 amended report, is that correct?

15 A Correct.

16 Q Do you recall being deposed in March of 2014?

17 A Correct.

18 Q Even after you were deposed, you did not issue any  
19 amended reports, is that correct?

20 A Correct.

21 Q I'm showing you a document marked as Exhibit D-38.  
22 Is this the fee engagement letter between you and Mr.  
23 Berkowitz? It's in that black book, the binder up  
24 there.

25 (Pause in proceedings.)

Mr. Geisser - Cross

242

1 THE COURT: Mr. Berkowitz, do you know what  
2 number it is?

3 MR. BERKOWITZ: I'm sorry, it's D-38?

4 MR. PETERSON: Correct.

5 THE COURT: Maybe we can speed it up here.  
6 Okay.

7 MR. BERKOWITZ: Your Honor, I would like --  
8 first I would like to see it.

9 MR. HIPPLE: Well, it's in the binder.

10 MR. BERKOWITZ: Oh. I'll object to the  
11 introduction and use of the document. It is a fee  
12 agreement between myself and Mr. Geisser's firm. It is  
13 what it says it is.

14 THE COURT: Why would that -- why would this  
15 not be admissible? It goes to --

16 MR. BERKOWITZ: I don't think it goes to  
17 relevance and I don't think --

18 THE COURT: Well --

19 MR. BERKOWITZ: He was engaged and I'm just  
20 not sure how it's pertinent to the inquiry.

21 THE COURT: I'll overrule the objection. You  
22 may proceed or question him on this document or if you  
23 want to introduce it into evidence, you're permitted to  
24 attempt to do so. Go ahead.

25 BY MR. HIPPLE:

Mr. Geisser - Cross

243

1 Q Do you have the document in front of you now, Mr.  
2 Geisser?

3 A I do.

4 Q All right. Showing you document marked as Exhibit  
5 D38. This is the fee engagement letter between you and  
6 Mr. Berkowitz, is that correct?

7 (Pause in proceedings.)

8 A Correct.

9 Q You were retained to perform a calculation of  
10 value, is that correct?

11 A Correct.

12 Q And, specifically, you were retained to analyze  
13 available financial records and to estimate the  
14 distributable cash flow available to the owners,  
15 insiders, of the subject companies and prepare a  
16 calculation of value of SCIX as of approximately  
17 October 13, 2010, based on those records?

18 A Mr. Pederson, you --

19 Q I think you can cross-ref --

20 A -- were reading from the letter and then I think  
21 you went off --

22 Q Exactly. I was going to say this cross-references  
23 a report to section two.

24 A I'm just going to ask you to repeat the question  
25 because it's --

Mr. Geisser - Cross

244

1 Q Sure. And, specifically, you were retained --

2 A Slow down just a little bit.

3 Q Okay, sorry.

4 A Thanks.

5 Q And, specifically, you were retained to analyze  
6 available financial records and to estimate the  
7 distributable cash flow available to the  
8 owners/insiders of the subject companies and prepare a  
9 calculation of value of SCIX, LLC, as of approximately  
10 October 13, 2010, based on those records? And this  
11 references your report, section two.

12 THE COURT: So your question is that's what  
13 the letter says?

14 MR. PEDERSON: Yeah.

15 THE WITNESS: Let me respond by saying you're  
16 not quoting from the letter. You're conflating (sic)  
17 the letter and the report. I would agree that I was  
18 retained to provide a calculation of value as of  
19 October of 2010. That's -- if that's --

20 BY MR. HIPPLE:

21 Q Yeah, that's it.

22 A I think that's responsive to your question.

23 Q And you described the financial records in your  
24 report as fragmentary, is that correct?

25 A Correct.

Mr. Geisser - Cross

245

1 Q And you admit that you did not know or have  
2 personal knowledge as to who the owners/insiders of  
3 each of the subject companies were at the relevant time  
4 frame, is that correct?

5 A That's not correct.

6 Q Okay. You had personal knowledge as to who the  
7 owners/insiders of each of the subject companies were  
8 at the relevant time?

9 THE COURT: When you say "personal knowledge"  
10 what do you mean by that? You mean knowledge based on  
11 his review of all the documents in this case and  
12 depositions?

13 MR. HIPPLE: Their names. The people -- the  
14 names of the insiders and everything.

15 THE COURT: He said he does have knowledge,  
16 but the question was does he have "personal knowledge."  
17 What do you mean by that?

18 MR. HIPPLE: Did he know at the time he did  
19 the report the names of the people involved that are --  
20 names of the people?

21 THE COURT: Of what people?

22 MR. HIPPLE: Brian, Melissa, myself.

23 THE WITNESS: Let me respond by saying that  
24 when we get involved in a case one of the first things  
25 that we do is we pick up the basic pleadings in the

Mr. Geisser - Cross

246

1 case. In this particular instance, probably the first  
2 place I would go would be to the complaint. The  
3 complaint typically lays out the parties in the case.

4 So that's the starting point for us learning  
5 the people that are relevant to the case. Then we  
6 certainly sat down with Mr. Berkowitz. We discussed  
7 the case, the nature of the case, the people whose  
8 names we would begin to see in the records. He  
9 certainly sat down and explained, you know, who those  
10 parties were, and we began to take a look at the  
11 records and understand them at that level, and so  
12 that's how we became familiar with the parties to the  
13 case.

14 BY MR. HIPPLE:

15 Q You were told to make assumptions as to who these  
16 insiders and owners were, is that correct?

17 A I think it probably mischaracterizes it as an  
18 assumption. If somebody says, you know, for example,  
19 Melissa Moreno is related to Brian Hipple a certain  
20 way, I accepted that information as fact in the sense  
21 that she was related and had two children by Brian  
22 Hipple.

23 I understood Brian Hipple was Clement  
24 Hipple's son. I mean I understood those basic  
25 relationships that I felt were relevant to determine

Mr. Geisser - Cross

247

1 who the insiders were in the case.

2 As names came up in the records, I looked for  
3 information or I had additional conversations with Mr.  
4 Berkowitz to confirm what the nature of the information  
5 was.

6 So that was the approach that we used.  
7 That's the approach we use in virtually every case we  
8 get involved in. There's certainly a learning curve to  
9 understanding who the parties are.

10 Sometimes we begin to see names in records  
11 that we say, you know, Mr. Berkowitz, for example, do  
12 you know who this party is? Do we think this party is  
13 relevant? So we begin to develop a story around the  
14 underlying financial records and we start to connect  
15 the dots, if you will.

16 But, there's a learning process to  
17 understanding who the relevant parties are in the case.  
18 But we -- I -- yes, to answer your question directly, I  
19 think we understood the primary insiders in the case.

20 (Pause in proceedings.)

21 Q With the engagement letter, you reference the AICPA  
22 statement of standards for valuations as your source  
23 for definition of calculation of value, is that  
24 correct?

25 A Correct.

Mr. Geisser - Cross

248

1 Q And is the AICPA statement for valuations  
2 recognized in your industry as authoritative?

3 A Yes, it is.

4 Q I'm showing you a document marked as D-37.

5 THE COURT: That's the black binder, Mr. --

6 MR. BERKOWITZ: Do you have it?

7 THE WITNESS: I have it.

8 (Pause in proceedings.)

9 MR. HIPPLE: I think it's missing pages.

10 MR. PEDERSON: Yeah, Your Honor, we noticed  
11 earlier that D-37 seems to only have odd number pages  
12 in it.

13 MR. HIPPLE: So I have one copy of the  
14 original --

15 THE COURT: Okay.

16 MR. HIPPLE: -- that I can give to him.

17 THE COURT: Well, that's your exhibits.  
18 That's not -- that's your exhibits, D-37, right?

19 MR. HIPPLE: Yes.

20 THE COURT: Okay. So do we have a full copy?

21 MR. HIPPLE: Yes.

22 THE COURT: All right. Why don't you show it  
23 to the witness if you wish?

24 (Pause in proceedings.)

25 BY MR. HIPPLE:



Mr. Geisser - Cross

249

1 Q And the question here, is that a fair and accurate  
2 depiction of the AICPA standards -- statement on  
3 standards for valuation?

4 (Pause in proceedings.)

5 A Without flipping through every page, yes, it  
6 appears to be.

7 Q You are a member of the AICPA?

8 A Yes, I am.

9 Q And as a member of the AICPA, you're obligated to  
10 follow the standards set forth in D-37?

11 A Yes, I am.

12 Q Can you read the definition for calculation of  
13 value?

14 A Can you point me to the paragraph real quick?

15 Q I think it's going to be around page 12 and 13.  
16 I'm sorry, pages 12, 13.

17 (Pause in proceedings.)

18 A Paragraph 21 under subheading entitled "Types of  
19 Engagement." "There are two types of engagement to  
20 estimate value, a valuation engagement and a  
21 calculation engagement. The valuation engagement  
22 requires more procedures than does the calculation  
23 engagement. The valuation engagement results in a  
24 conclusion of value. The calculation engagement  
25 results in a calculated value. The type of engagement

Mr. Geisser - Cross

250

1 is established in the understanding with the client  
2 (paragraphs 16 and 17)." Do you want me to continue?

3 Q Yes.

4 A ": A, valuation engagement, a valuation analyst  
5 performs a valuation engagement when one, the  
6 engagement calls for a valuation analyst to estimate  
7 the value of a subject interest, and two, the valuation  
8 analyst estimates the value (as outlined in paragraphs  
9 23 through 45) and is free to apply the valuation  
10 approaches and methods he or she deems appropriate in  
11 the circumstances. The valuation analyst expresses the  
12 results of the valuation as a conclusion of value. The  
13 conclusion may either be a single amount or a range.

14 "Paragraph B, calculation engagement, a  
15 valuation analyst performs a calculation engagement  
16 when one, the valuation analyst and the client agree on  
17 the valuation approaches and the methods the valuation  
18 analyst will use and the extent of the procedures the  
19 valuation analyst will perform in the process of  
20 calculating the value of a subject interest. (These  
21 procedures will be more limited than those of the  
22 valuation engagement.)

23 "And two, the valuation analyst calculates  
24 the value in compliance with the agreement. The  
25 valuation analyst expresses the results of these

Mr. Geisser - Cross

251

1 procedures as a calculated value. The calculated value  
2 is expressed as a range or a single amount. A  
3 calculation engagement does not include all of the  
4 procedures required for a valuation engagement  
5 (paragraph 46)."

6 Q Thank you. So an opinion of value or valuation  
7 engagement is a more comprehensive engagement, is that  
8 correct?

9 A Correct, as stated in the standards.

10 Q Now, the methods that you used to come by to a  
11 conclusion of value, evaluation depend on the nature of  
12 the engagement, is that correct?

13 A I'm sorry, could you restate your question, please?

14 Q Sure. The methods that you used to come to a  
15 conclusion of value, they depend upon the nature of the  
16 engagement, is that correct?

17 (Pause in proceedings.)

18 A I would say generally, yes.

19 Q And if a conclusion of value engagement -- I'm  
20 sorry. And if it is a conclusion of value engagement,  
21 then there is a rather comprehensive list of different  
22 factors that should be considered, is that correct?

23 A If it's a conclusion of value engagement, it's a  
24 more expansive analysis, yes.

25 Q These factors include looking at the business as a

Mr. Geisser - Cross

252

1 whole, is that correct?

2 A Yes.

3 Q And looking at the nature of the products?

4 A Yes.

5 Q The capital structure?

6 A Yes.

7 Q The economic conditions, externally and internally?

8 A Yes.

9 Q And you would agree that a calculation of value  
10 engagement does not include all the procedures required  
11 for a valuation engagement, is that correct?

12 A That's correct.

13 Q And this -- and in this instance, you did not  
14 perform an opinion of value or calculation -- I'm  
15 sorry -- or an opinion of value, but you did a  
16 calculation of value, is that correct?

17 A Correct.

18 Q And when performing a calculation of value, you and  
19 your client agree upon exactly how you are going to  
20 calculate the value of an asset or a business, is that  
21 correct?

22 A When I was approached about this engagement we  
23 talked about the nature of the records that were  
24 available and the type of procedures that could be  
25 applied under the circumstances realizing that we were

Mr. Geisser - Cross

253

1 dealing with fragmentary records. I explained that to  
2 Mr. Berkowitz.

3 That's also documented in the engagement  
4 letter that we talked about a few minutes ago because I  
5 recognized that I couldn't do an opinion of value. If  
6 that was an option, then we could have talked about  
7 that option. But, because of the constraints put on  
8 the records that were available, to me, that was not a  
9 viable option and I couldn't do that.

10 I couldn't do that because I didn't have  
11 records, and I certainly didn't have access to the  
12 client to review this very complicated ownership  
13 structure that's been discussed over the course of the  
14 last two days.

15 Q Do you agree on the mathematical formula you were  
16 going to use?

17 A I can't -- I can't respond to your question. I  
18 don't -- what do you mean by "mathematical formula"? I  
19 know I'm not supposed to ask the questions here, but  
20 I --

21 THE COURT: Not, that's okay.

22 THE WITNESS: -- I don't understand the  
23 question.

24 THE COURT: You're asking for clarification.

25 THE WITNESS: I'm clar --

Mr. Geisser - Cross

254

1 THE COURT: Right.

2 THE WITNESS: You need to clarify what you  
3 mean --

4 THE COURT: Right.

5 THE WITNESS: -- by the calculation or --

6 BY MR. HIPPLE:

7 Q Well, for example, the SDE approach.

8 A The SDE approach was something that I was aware of.  
9 Mr. Berkowitz wasn't aware of that. I explained to him  
10 that, you know, this was something that we used in the  
11 valuation world and that these databases were  
12 available, and based on the nature of the case and what  
13 I understood needed to be addressed in the case, I felt  
14 that this was the most appropriate methodology that was  
15 available to me and, in fact, probably was among the  
16 only methodologies that were available to me.

17 For example, you know, we didn't have a  
18 balance sheet, so we couldn't even use an asset  
19 approach to the valuation process, and I just use that  
20 as a point of example.

21 Q Just for some clarification on the mathematical  
22 formula, SDE was the only approach?

23 A Seller's discretionary earnings, SDE, was the  
24 methodology that I felt was most appropriate. We were  
25 dealing with looking at bank records. I could see that

Mr. Geisser - Cross

255

1 there were distributions that were coming out of the  
2 bank records.

3 It occurred to me that this was a methodology  
4 that could address the fundamental question of  
5 substantially equivalent value that we needed to --  
6 that was being addressed -- that we needed addressed in  
7 terms of what the issues were before the -- in the  
8 case.

9 Q Okay.

10 A And so I felt that this was the most effective way  
11 to address that question given the bank records that we  
12 had, which did show distributions, and this metric that  
13 we had in the BizComps which had to do with seller's  
14 discretionary earnings. And it was because of that  
15 circumstance that I chose that, among methodologies, to  
16 use that method.

17 And as we talked about earlier, as the  
18 standards we just read, a valuation analyst has the  
19 ability to choose among the various methodologies that  
20 is used. This is the one I felt was the best  
21 methodology to use under the circumstances I found  
22 myself.

23 Q All right. From what you're describing, it's not  
24 the only method, is that correct?

25 A There are many different methodologies that are

Mr. Geisser - Cross

256

1 used. There are volumes of books that are written  
2 about this. I'm sure you're aware of that.

3 Q I'm just asking the questions.

4 (Pause in proceedings.)

5 Q In this instance, you and the plaintiff's counsel  
6 agreed that you would calculate the value of cash flow  
7 based upon seller's discretionary earnings, is that  
8 correct?

9 A Yes, that was what I recommended that we do.

10 Q And that would be seller's discretionary -- sorry  
11 -- earnings times a multiplier, is that correct?

12 A Correct.

13 Q And, in fact, you and Mr. Berkowitz made the  
14 specific decision that you were not going to get  
15 involved in performing a valuation of what was on the  
16 inventory prepared by Clem Hipple after he took the  
17 SCIX assets, is that correct?

18 A Well, let me explain that. I initially asked  
19 whether there was information that was available as to  
20 the assets that were taken. My recollection is the  
21 response I got back was that there was a representation  
22 made by Mr. Hipple that there was nominal value to the  
23 assets that were taken.

24 And when I heard the response that there was  
25 nominal value to the assets that were taken, it seemed



Mr. Geisser - Cross

257

1 to me that the more important measure of value here was  
2 the income stream.

3 I subsequently learned after I prepared the  
4 report there was, in fact, this inventory of assets,  
5 physical assets that were taken, that Mr. Hipple had  
6 represented in an affidavit I believe that the value of  
7 those assets were in the range of I want to say  
8 \$110,000.

9 When we looked at that more closely after the  
10 report was prepared I realized that it was really an  
11 understatement of what the value that was taken. I  
12 mean we're talking over 5,000 bottles of material. We  
13 started to do the math on it. I said this is much more  
14 than \$110,000. And so that's why it came out during  
15 the course of my deposition, I explained that during --  
16 excuse me -- during the course of my deposition it came  
17 up with an estimate of that number.

18 And had I known that information at the time  
19 of the report, I would have certainly added that to the  
20 overall value, which we have done today in the  
21 courtroom.

22 Q Did you ever receive an inventory from Colonial  
23 Chemical stating what type of bottles were at the  
24 location?

25 A I don't recall seeing any inventory from Colonial

Mr. Geisser - Cross

258

1 Chemical. My recollection is that I saw the inventory  
2 that we talked about already today during the course of  
3 the deposition.

4 Q Again, but all Colonial records were subpoenaed,  
5 okay, and there was an inventory showing there was  
6 bottles for the UK and bottles for the United States.

7 MR. BERKOWITZ: Your Honor, if I could. I  
8 don't mean to interrupt, but if I could just make a  
9 brief objection. I don't have a problem with Mr.  
10 Pederson's reading the questions, but I don't think  
11 it's fair for them to be able to go back and forth. If  
12 Mr. Geisser could respond to one or the other?

13 THE COURT: Well, let me -- this is really  
14 unusual. I agree. I understand -- it appears that  
15 someone prepared questions for Mr. Hipple to use in the  
16 cross-examination of Mr. Geisser.

17 It was clear to me that Mr. Hipple was having  
18 difficulty reading those questions and, initially, I  
19 wasn't permitting Mr. Pederson to read those questions,  
20 but it became apparent he was having difficulty reading  
21 that, and in order to, which I think everybody's  
22 interested, speed this along, I let Mr. Pederson read  
23 those questions. I'm looking at your resume, Mr.  
24 Pederson, I notice you're also a lawyer, too.

25 MR. PETERSON: Yes, sir.

Mr. Geisser - Cross

259

1 THE COURT: You're a member of the Maryland  
2 bar and also the Louisiana bar. So that's why I  
3 permitted him to do so, and I stand by that ruling.

4 But there are some questions, apparently, Mr.  
5 Hipple has thought of that are not prepared questions  
6 but he thought about it, is that right, in the course  
7 of this examination?

8 MR. HIPPLE: Yes, because --

9 THE COURT: There's some other --

10 MR. HIPPLE: -- the numbers --

11 THE COURT: -- additional questions.

12 MR. HIPPLE: -- are on the board there, Your  
13 Honor.

14 THE COURT: So I'm going to overrule your  
15 objection. I'll permit him to do it.

16 MR. BERKOWITZ: I have no objection to Mr.  
17 Hipple asking questions. My objection was more to  
18 bouncing back and forth so that --

19 THE COURT: Right. All right.

20 MR. BERKOWITZ: -- Mr. Geisser --

21 THE COURT: I don't --

22 MR. BERKOWITZ: -- doesn't have to bounce  
23 back and forth.

24 THE COURT: I don't anticipate Mr. Pederson  
25 asking any further questions because I think the

Mr. Geisser - Cross

260

1 written, prepared cross-examination has already been  
2 completed?

3 MR. HIPPLE: Yes, it's all completed.

4 THE COURT: Okay. So Mr. Hipple is going to  
5 be the only one to finish the cross-examination.

6 MR. HIPPLE: All right.

7 THE COURT: Go ahead --

8 MR. HIPPLE: This --

9 THE COURT: -- Mr. Hipple. Any other  
10 questions you have?

11 BY MR. HIPPLE:

12 Q Again, did you have any knowledge from Mr.  
13 Berkowitz or from anybody, from Col -- any information  
14 from Colonial Chemical that we sold chemical to the UK,  
15 United Kingdom?

16 A I have a vague recollection of something along  
17 those lines, but only really only the vaguest, and I  
18 think that may be influenced by what I've heard over  
19 the last two days more than anything else.

20 Q Okay. But then --

21 A I --

22 Q -- you were examining the bank statements, did you  
23 not see deposits from the UK or wire transfers?

24 A You're going to have to point that out to me. I  
25 mean we looked at the bank records. We're talking

Mr. Geisser - Cross

261

1 about thousands of transactions. It's possible that,  
2 you know, I saw some of those transactions, it's  
3 possible that my staff person saw some of those  
4 transactions. I'm not sure I understand what the  
5 relevance of that is.

6 Q Well, the relevance is that the bottles going to  
7 the UK were for \$12 a bottle, okay? And it has a large  
8 relevant here, okay, that the majority of the bottles  
9 that were in stock in the warehouse in Colonial  
10 Chemical were \$12 bottles, not 49 or 59 or whatever the  
11 price was, okay? So the valuation that's gone on the  
12 chart there is totally incorrect, which I will clear up  
13 tomorrow, you know, when I go on the stand myself.

14 But in other words, when you were doing the  
15 sales forecasts, okay, you mean to tell me you didn't  
16 see any large numbers coming in as sales? You must  
17 have.

18 THE COURT: I think your question is a little  
19 bit unclear.

20 MR. HIPPLE: Okay.

21 THE COURT: So I --

22 MR. HIPPLE: Okay. Do you --

23 THE COURT: Let me just -- let me -- I do  
24 understand there's something in the record, I agree  
25 with you, that the UK price was at one point at \$12 a

Mr. Geisser - Cross

262

1 bottle. I saw that. I don't know if you had a chance  
2 to see it, Mr. Geisser. It's somewhere in the record.

3 And I do understand your point that these  
4 calculations are based on the US price. That's your  
5 point. Okay, we got that. So what's your next  
6 question? Do you have another one, Mr. Hipple, beyond  
7 that?

8 MR. HIPPLE: No, other than whether or not he  
9 saw any large revenue coming in when he was doing the  
10 sales forecast, sales forecast that he has -- well, he  
11 had to do a sales --

12 THE COURT: During a particular -- during a  
13 particular period? I mean an unusual --

14 MR. HIPPLE: For every -- for each year.

15 THE COURT: Okay.

16 MR. HIPPLE: For the years.

17 BY MR. HIPPLE:

18 Q You had to see a sales forecast. You did a sales  
19 forecast, correct?

20 A Let me clarify what I think you're asking if I  
21 could. I took bank records and we analyzed the bank  
22 records. The bank records that we had available to us  
23 are debits and credits.

24 Q Right.

25 A The debits are things like (indiscernible), right?

Mr. Geisser - Cross

263

1 The credits are the monies --

2 Q Well, excuse me --

3 A -- that come through credit card processing and the  
4 like. So you can see the money being deposited into  
5 the account, the merchant processing, the credits going  
6 into the account. There's hundreds of those types of  
7 transactions that we saw in the bank records.

8 I can't -- I can probably go back now and try  
9 to identify maybe something coming from the UK, but  
10 that was not something that we performed as a  
11 fundamental part of our analysis however.

12 Q Well, it would have been --

13 A From my standpoint, there were dollars in. I  
14 looked at it as dollars in, dollars out, dollars into  
15 the bank account, dollars out of the account. Where it  
16 came from was really of no relevance to my analysis.

17 Q Okay. But it would have been -- it would have been  
18 very obvious, okay, because the credit card was  
19 everyday, okay, in small amounts like what, 1,600,  
20 1,800, 1,200, and the UK had to be in the thousands,  
21 maybe 12,000, 13,000, and that didn't ring a bell to  
22 you?

23 A Again, it was dollars into the account. It was  
24 sale of product that we were accounting for as dollars  
25 into the account.

Mr. Geisser - Cross

264

1 Q All right. I'll deal with the UK at -- when I go  
2 on the stand. Hold on for one minute.

3 (Pause in proceedings.)

4 Q Okay. When you -- this is your report, okay, on  
5 page 12. E3.

6 A Just give me a second to do some housekeeping here.

7 (Pause in proceedings.)

8 THE COURT: Page 12 in?

9 MR. HIPPLE: Mr. Geisser's report, I believe  
10 it's E-3. E-3.

11 THE WITNESS: Exhibit E-3.

12 BY MR. HIPPLE:

13 Q E-3, page 12.

14 A I have Exhibit E-3.

15 Q Page 12. At the bottom, at the very -- I'll wait  
16 for Your Honor.

17 (Pause in proceedings.)

18 Q At the bottom of the page, on April 12th, 2000,  
19 wire transfer, \$10 fee from Steel Seal in the amount of  
20 27,066.00. I know that's certainly not a credit card  
21 deposit. Plus, it was a wire transfer from Steel Seal,  
22 Ltd., UK. And I don't understand how you could have  
23 missed that.

24 MR. BERKOWITZ: I'm sorry. Could you give me  
25 the page number? I'm having a little difficulty.



Mr. Geisser - Cross

265

1 MR. HIPPLE: Yeah, 12.

2 MR. BERKOWITZ: 12? I want to make sure I'm  
3 on the right page.

4 MR. HIPPLE: E-3.

5 MR. BERKOWITZ: And I'm sorry, it's --

6 MR. HIPPLE: On 4-12-2012.

7 MR. BERKOWITZ: 2012?

8 MR. HIPPLE: Right. E-3 on April 12th, 2012,  
9 at the bottom towards -- about five up from the bottom,  
10 amount credited of 27,066,90, from Steel Seal, Ltd.,  
11 UK.

12 BY MR. HIPPLE:

13 Q I don't understand how you could have missed that.

14 A What's the question? I'm not sure I understand the  
15 question.

16 Q My question is that you did all these bank records  
17 and this is your report, okay? All right? But yet,  
18 you didn't realize that in your evaluation of the  
19 report that it's possible that the bottles were -- the  
20 chemical was being sold for a lesser amount?

21 A Well, if you want me to respond, this is analysis  
22 of bank records. We didn't miss anything. We recorded  
23 it just as we saw it in the bank records. There's  
24 nothing in that entry that has anything to do with the  
25 value of the bottles being sold. That's an aggregate

Mr. Geisser - Cross

266

1 deposit from something, a wire transfer from Steel  
2 Seal, Limited, UK.

3 Q Coming in from a different country?

4 A It poss -- it's possibly a different company, and  
5 if it's a different company, maybe there's more records  
6 out there we should be looking about Steel Seal UK that  
7 weren't turned over. I don't know the answer to that.  
8 I can only saw what was deposited in the account.

9 And, frankly, it causes me to ask the  
10 question about whether there were additional records  
11 outside of what we were provided with that may relate  
12 to Steel Seal UK.

13 Q Well, wouldn't that have thrown a flag up to you at  
14 one point in time when you looked at the records or  
15 if -- or questioned Mr. Berkowitz in reference to it?

16 A I don't know what flag you're talking about.  
17 Again, we were looking at an analysis of cash in and  
18 cash out. This to us, the way we viewed this, this was  
19 cash into the bank account which gave the basis for  
20 distribution out. What was important for our analysis  
21 was to establish the dist -- the seller's discretionary  
22 earnings, the distributions that were going to the  
23 insiders of this --

24 Q Yeah, you --

25 A -- enterprise.

Mr. Geisser - Cross

267

1 Q -- were concentrating more on the insiders.

2 Basically -- okay. Now, you saw this go on the board  
3 today, right?

4 A Yes.

5 Q Okay. Same section, 3E, if you turn to the first  
6 page after E-3, and read the second line of --

7 MR. BERKOWITZ: I'm sorry, which page? Do  
8 you have a page number?

9 MR. HIPPLE: First page. Don't have a page  
10 number. Right? After the Exhibit E-3.

11 MR. BERKOWITZ: Yep.

12 MR. HIPPLE: Second line of revenue.

13 BY MR. HIPPLE:

14 Q What does it -- can you read that to me, please?

15 A It says "Revenue UK."

16 Q How much.

17 A \$186,826.30.

18 Q So, again, when this was being put up on the board,  
19 this is your report and Mr. Berkowitz saw this report,  
20 had knowledge of this report, and yet you won't accept  
21 the fact that there's a bottle being sold for \$12 and  
22 -- you won't accept the fact?

23 THE COURT: Well, your report, it didn't  
24 address the value of the inventory, did it?

25 THE WITNESS: No.

Mr. Geisser - Cross

268

1 THE COURT: No.

2 MR. HIPPLE: No, this isn't inventory. This  
3 is --

4 THE WITNESS: As I explained --

5 MR. HIPPLE: -- actual sales, Your Honor.

6 THE COURT: No, but your point is that in the  
7 valuation of the inventory on the chart, it didn't take  
8 into account that some of those sales may have been  
9 from people in the UK.

10 MR. HIPPLE: Well, my --

11 THE COURT: But his evaluation --

12 MR. HIPPLE: My cost evaluation, which was  
13 also part of the report, shows how many bottles were  
14 UK, okay?

15 THE COURT: Okay.

16 MR. HIPPLE: And that was -- and that was in  
17 my affidavit and, again, so --

18 THE COURT: So this affects your cost?

19 MR. HIPPLE: Well, it affects -- it affects  
20 the number that he put up there, but he took it from  
21 1.75 to a million because of this great number.

22 THE COURT: Right, I understand that.

23 MR. HIPPLE: Right? Which is in there.

24 THE COURT: But how does it affect his  
25 analysis of cash in, cash out and a multiple that he

Mr. Geisser - Cross

269

1 used to come to his valuation, whether the income came  
2 from the UK or it came from the US, on the way he  
3 calculated the value.

4 MR. HIPPLE: Well, because it would have  
5 affected in the area of the actual sales based on the  
6 amount of sales that would be going out to the UK. So  
7 it's got to be considered that we're selling the  
8 bottles at a cheaper price or so than the price that --

9 THE COURT: Would that have affected your  
10 valuation of the value of the business as of October  
11 2010?

12 THE WITNESS: Not really. No, again, it was  
13 a cash in, cash in analysis. We were calculating based  
14 on the value of the distributions to the insiders, if  
15 you will.

16 THE COURT: What the bottom line is what they  
17 took out of it.

18 THE WITNESS: What the bottom line is.

19 THE COURT: Right.

20 THE WITNESS: What they took out.

21 THE COURT: Right.

22 THE WITNESS: It was a dollars analysis.  
23 Just to come back, I wasn't aware of that inventory  
24 until after this report was done and --

25 THE COURT: You testified to that.

Mr. Geisser - Cross

270

1 THE WITNESS: Right. I already --

2 THE COURT: Yes.

3 THE WITNESS: -- testified to that. So there  
4 was no way I would have considered that. To me, it  
5 doesn't really make any difference in terms of the  
6 opinion that I've rendered, and I just -- it's just --

7 THE COURT: It may affect your opinion from  
8 the 1.75 to 2 million. Maybe you might concede that  
9 might --

10 THE WITNESS: Yeah.

11 THE COURT: -- be something you would --

12 THE WITNESS: I would --

13 THE COURT: -- you need to -- you need to  
14 consider?

15 THE WITNESS: I would agree.

16 THE COURT: Right.

17 THE WITNESS: I would agree. But just based  
18 on the information that was available to me in terms of  
19 what we saw in the selling price on the internet,  
20 extending the math accordingly, that's the answer.

21 THE COURT: Right, I understand.

22 THE WITNESS: And, you know, we didn't get a  
23 response report back at any time that would have  
24 clarified that issue.

25 THE COURT: Right.

Mr. Geisser - Cross

271

1 THE WITNESS: That issue certainly came out  
2 during the course of my deposition. Had we gotten a  
3 supplemental report, we could have addressed it in due  
4 course, but we didn't get any supplemental report or  
5 any way to address it in that fashion.

6 THE COURT: Thank you. Mr. Hipple --

7 MR. HIPPLE: Okay.

8 THE COURT: -- go ahead. Any other  
9 questions?

10 MR. HIPPLE: No, Your Honor, just that it  
11 affects that number that is on the board.

12 THE COURT: I understand.

13 MR. HIPPLE: Okay.

14 THE COURT: I do understand your point.

15 MR. HIPPLE: Okay. Thank you, Your Honor.

16 THE COURT: Mr. Berkowitz?

17 MR. BERKOWITZ: Your Honor, if I could just  
18 have a brief redirect?

19 THE COURT: Sure.

20 REDIRECT EXAMINATION

21 BY MR. BERKOWITZ:

22 Q Mr. Geisser, I'll direct your attention to E-3, the  
23 exhibit that you were just speaking about with Mr.  
24 Hipple. At the top of the page it says "Steel Seal  
25 Pro." Would you tell us what year that is?

Mr. Geisser - Redirect

272

1 A 2012.

2 Q Okay. So this is UK sales for the year 2012,  
3 correct?

4 A Correct. Well, to be more precise about it, they  
5 were the deposits in 2012.

6 Q Okay. And the transaction between SCIX and Steel  
7 Seal Pro and Complete Group and the transfer of the  
8 assets happened in October 2010?

9 A Correct.

10 Q Okay. So this UK issue may not -- may or may not  
11 involve or be implicated in the year 2010, is that  
12 correct?

13 A That's correct.

14 Q Now, on page 12 of the same exhibit, Mr. Hipple  
15 points out that 27,066.90 came in in US dollars from  
16 the UK.

17 A Correct.

18 Q Would it matter if it came in from Australia or  
19 some place that takes the euro? Would it matter where  
20 the money comes from?

21 A Not really, as long as we're accounting for the  
22 sales for this particular entity. If there's some  
23 entity that sits outside of this entity, they would --  
24 it would sort of peak my curiosity in terms of are we  
25 missing an entity out there.



Mr. Geisser - Redirect

273

1 But, in terms of -- assuming that the sales  
2 went through Steel Seal Pro, which is -- this is the  
3 Steel Seal Pro bank account, then it really doesn't  
4 make a different, you know, where the money comes  
5 from.

6 Q US cash is US cash no matter where it comes from?

7 A That's correct.

8 Q Okay. Now, let me ask you about whether your  
9 opinion was rendered with a reasonable degree of  
10 certainty in the field of accounting.

11 Can you state that your analysis, based on  
12 what you explained to us and your opinion is based to a  
13 reasonable degree of certainty, as that term applies in  
14 the accounting field?

15 A Yes, all the opinions that I have rendered today  
16 and in my report are to a reasonable degree of  
17 accounting/valuation certainty, and I believe are in  
18 accordance with the standards that apply.

19 Q Okay. And just to clarify something, and I think  
20 we just dealt with it, you came up with a \$1.75 million  
21 valuation of the cash flow from the sales of Steel  
22 Seal, correct?

23 A Correct.

24 Q And the value of the inventory is on top of that?

25 A That's correct.

Mr. Geisser - Redirect

274

1 Q So if the value of this inventory is 500,000, you  
2 add 500,000 to the 1.7?

3 A Correct.

4 Q And if the value of the inventory is 100,000, you  
5 add 100,000 to the 1.75?

6 A Well, the idea here is to get any excess inventory,  
7 right, because in the statistical information that  
8 comes from BizComps, it doesn't include inventory. It  
9 specifically doesn't. So yes, it's added. Yes, it's  
10 added in there.

11 Q And you were asked questions about I think it was  
12 certain assumptions that were made. You and I had had  
13 discussions. Have you and I worked before on other  
14 matters, other accounting assignments?

15 A I had one other accounting assignment, one or two I  
16 think before this.

17 Q Okay. And you know I've worked with people in your  
18 firm since the '80s?

19 A Yes.

20 Q And do you rely if I provide you some assumptions  
21 that you list in your report, do you consider them to  
22 be accurate?

23 A I do, sure.

24 Q Okay. Now --

25 A I mean we test the assumption. We just don't

Mr. Geisser - Redirect

275

1 accept assumptions necessarily for -- because Mr.  
2 Berkowitz said these are the assumptions, but, you  
3 know, if we think that require -- they require testing,  
4 we'll test those assumptions.

5 Q Now, you also -- I think you heard -- I think you  
6 testified to this. You heard that Mr. Hipple paid \$2  
7 million for the patent rights and formula?

8 A I did hear that, yes.

9 Q Okay. And that would indicate to you that there is  
10 some value to this product?

11 A Yes.

12 Q And you were asked about reasonably equivalent  
13 value, and I don't want to use that in the technical  
14 term because that's a term the Judge will decide.  
15 Would you consider it a fair exchange if somebody  
16 trades \$210,000 and gets in return a \$1.75 million  
17 asset? Would that be a fair exchange?

18 A No, it's not a fair exchange.

19 Q Okay.

20 (Pause in proceedings.)

21 MR. BERKOWITZ: I have no other questions,  
22 Your Honor.

23 THE COURT: Okay. Mr. Hipple?

24 MR. HIPPLE: Can we have a five minute break,  
25 Your Honor?

Mr. Geisser - Redirect

276

1 THE COURT: Yes, I'm ont going to leave the  
2 courtroom. You can talk among yourselves because we're  
3 going to end at 4:30, okay?

4 MR. HIPPLE: Okay.

5 THE COURT: So why don't you -- if you need  
6 some time to confer, that's fine.

7 (Pause in proceedings.)

8 RECROSS-EXAMINATION

9 BY MR. HIPPLE:

10 Q Okay. I want to go back to, basically, the  
11 statement of value of the corporation at 1.75 million,  
12 right, and then trying to add in another 300,000 to  
13 bring it up to the 2 million, correct?

14 A Correct.

15 Q Okay. In your -- well, I don't know what page  
16 number, but Exhibit C. If you look at Exhibit C?

17 (Pause in proceedings.)

18 A I have it.

19 Q At 2011, the total sales there, I'm going to use a  
20 terminology that only I basically know. I would call  
21 this double dipping, okay, because that inventory,  
22 right, that Mr. Berkowitz put up on the board was sold  
23 in 2011. So if you want to add it back in, you already  
24 got it in the sales of 2011. Where can you justify  
25 bumping it up another 300,000? That's double dipping,

Mr. Geisser - Recross

277

1 isn't it?

2 A No, it's not.

3 Q Okay. Well, okay. It's not the sales of the  
4 inventory in this figure?

5 A Can I explain?

6 Q Go ahead.

7 A The valuation is as of October 2013. The valuation  
8 that we're doing is looking at the ability of this  
9 business, the Steel Seal business, to produce cash flow  
10 over an extended period of time. Any valuation is  
11 based on the forward ability of that company to make  
12 earnings.

13 So, while we have three years that are spread  
14 out, really what we're doing is we're averaging that  
15 out to get an overall view of what is the -- answering  
16 the question, what is the ability of this business to  
17 generate earnings and cash flow going forward. That's  
18 why we only apply it to a single year at the end.  
19 Truly, we only apply it really to a single year.

20 So the valuation is as of October 2013. So  
21 what we're saying is based on the cash flow as of  
22 October 2013, the value of that company on that date is  
23 \$1.7 million, based on cash flow alone.

24 But, there's an additional asset that sits  
25 out there. If there were another \$200,000 sitting on

Mr. Geisser - Recross

278

1 the books as cash, we would say that you need -- you're  
2 buying cash, so we would say we -- you have to add in  
3 \$200,000 cash.

4 In this particular case, you have excess  
5 inventory. You have inventory that was fresh unsold  
6 inventory that is an additive asset to the cash flow  
7 stream, and for that reason, those things are added  
8 together.

9 So, while that may have been sold in a later  
10 period of time, as of October 2013, when we're talking  
11 about equivalent value as of that date, that's why it's  
12 additive at that point in time, not in 2011. So  
13 there's no double dipping involved here whatsoever.

14 Q But, again, but the goods were sold in 2011 and  
15 it's in the sales figure here. I don't understand what  
16 inventory you're talking about. What inventory are you  
17 talking -- we're talking about the inventory that I  
18 took, is that not correct?

19 A Absolutely.

20 Q Okay. If I took the inventory in 2010 and it was  
21 sold in 2011 and this sales number is in 2011, it's  
22 gone. There is no inventory. There's no inventory.  
23 It's gone. It's, you know, vanished. Discretionary  
24 earnings, right, would change?

25 A It's a little difficult to explain because we're

Mr. Geisser - Recross

279

1 involved in talking about valuation concepts here a  
2 little bit -- actually, more than a little bit. But  
3 when we're doing this value, again, I'll repeat myself.  
4 We're putting a value on this enterprise, this Steel  
5 Seal enterprise, as of a point in time.

6 That value, that calculated value is based on  
7 its ability to generate cash flow going forward.  
8 That's not -- that's not a single year that -- that's  
9 multiple years going forward. So when you're talking  
10 about --

11 Q I understand all that part.

12 A Let me finish.

13 Q That's not the part I'm talking --

14 MR. BERKOWITZ: I would object.

15 THE WITNESS: Let me finish.

16 MR. BERKOWITZ: Your Honor, the witness is  
17 answering the question.

18 THE COURT: Yes, I'll --

19 MR. HIPPLE: Okay.

20 THE COURT: -- sustain the objection.

21 THE WITNESS: So when you're doing this  
22 calculation I agree that that may have been sold in  
23 2011. There's no dispute on that. But it has to do  
24 with this ability -- the ability of this company, this  
25 enterprise, if you will, to generate cash flow and

Mr. Geisser - Recross

280

1 distributions to the owners, the insiders. That's what  
2 we're talking about.

3 So, it's additive in the sense that at that  
4 moment in time, it was free, it was additional capital  
5 that was available that was unrelated to the cash flow  
6 stream directly.

7 BY MR. HIPPLE:

8 Q Okay. But then that takes care of this? This is  
9 gone, is that correct, the 300,000 that you're trying  
10 to add on the top of --

11 A No.

12 Q -- the 1.7?

13 A No, it's additive.

14 Q I don't know.

15 MR. HIPPLE: I'm not an accountant, Your  
16 Honor, but from my standpoint, if the inventory was  
17 sold, it's in the -- and it's in the sales figures,  
18 okay, this would no longer exist, okay. So where would  
19 it come back in if you already got it in the sales?  
20 I'm just totally confused. I mean --

21 THE COURT: Well, let me just say I do  
22 understand your point, Mr. Hipple. I'm not saying I  
23 agree or disagree obviously, but I understand your  
24 point. Your point is that in the 2011 sales figures,  
25 it's 1.249 -- 1.2 million in excess, you're saying



Mr. Geisser - Recross

281

1 included in those sales figures is the inventory that  
2 was taken?

3 MR. HIPPLE: That's correct.

4 THE COURT: And that Mr. Geisser used those  
5 figures to come up with his calculations, and you're  
6 saying it's double counting. I understand that. I  
7 think you made your point.

8 MR. HIPPLE: Okay.

9 THE COURT: You know, I need to consider the  
10 whole picture here. And, obviously, I'll hear from Mr.  
11 Pederson. I'm sure he'll address that. And, you know,  
12 we'll hear argument on that, but I'm not sure you need  
13 to go any further on this.

14 MR. HIPPLE: Okay. Thank you, Your Honor.

15 THE COURT: No more -- no, we only go direct,  
16 cross, redirect, and recross. So if there's no more  
17 questions -- are you finished your questions?

18 MR. HIPPLE: Yes.

19 THE COURT: Okay. All right, you're excused,  
20 Mr. Geisser.

21 THE WITNESS: Thank you.

22 THE COURT: Thank you very much.

23 MR. HIPPLE: No, I mean I'm not finished my  
24 questions.

25 THE COURT: Oh, I thought --

Mr. Geisser - Recross

282

1 MR. HIPPLE: No.

2 THE COURT: -- you said you were.

3 MR. HIPPLE: I thought you meant that  
4 question --

5 THE COURT: Oh.

6 MR. HIPPLE: -- there I'm finished.

7 THE COURT: Oh, go ahead.

8 MR. HIPPLE: No, I'm not finished my  
9 questioning.

10 THE COURT: I thought you were.

11 MR. HIPPLE: Your Honor, I have 39 pages and  
12 we're on page five.

13 THE COURT: Okay. Go ahead.

14 BY MR. HIPPLE:

15 Q All right, we're going to go back to the fee  
16 engagement letter.

17 MR. BERKOWITZ: I'm sorry, if I could raise  
18 an objection.

19 THE COURT: Yes.

20 MR. BERKOWITZ: They went through, completed  
21 their testimony, I did a redirect.

22 THE COURT: Right.

23 MR. BERKOWITZ: Their recross should be  
24 limited to the couple of points I raised in my  
25 redirect, and I don't think there's 39 pages worth of

Mr. Geisser - Recross

283

1 questions there.

2 THE COURT: Right. So, Mr. Hipple, the rules  
3 are you're entitled -- you're on what's called recross,  
4 okay? We had the direct examination, we had your  
5 cross-examination, we had redirect from Mr. Berkowitz.  
6 He had a limited number of questions.

7 There may have been five questions I think,  
8 five or six questions, certain discrete areas. You're  
9 limited in now your questions to only those areas that  
10 he touched upon. So this is not another time to open  
11 up the whole thing. You had your chance. So what  
12 questions do you --

13 MR. HIPPLE: Where did I lose my chance, Your  
14 Honor? I don't understand.

15 THE COURT: Well, because the rules are you  
16 had -- you cross-examined him probably for about an  
17 hour, okay. And then Mr. Berkowitz had some redirect,  
18 which was limited to the points that you brought up on  
19 cross. Do you understand? So you're limited to the  
20 points that he brought up on recross.

21 MR. BERKOWITZ: Redirect.

22 THE COURT: On redirect. Excuse me, on  
23 redirect, thank you.

24 MR. HIPPLE: Well, then why did I allow him  
25 to redirect then? I mean what's the --

Mr. Geisser - Recross

284

1 THE COURT: You don't allow. The rules  
2 permit that. So what questions do you have? What  
3 areas do you want to get into?

4 MR. HIPPLE: Well, there's a lot of areas,  
5 Your Honor. There's a lot of areas in reference to the  
6 American Express bills, there's a lot of areas into my  
7 royalties. There's a lot of different areas that  
8 really need to be touched on because --

9 THE COURT: But you -- but you -- but the  
10 problem is with the American Express bills, they  
11 weren't brought up by Mr. Berkowitz on his redirect.

12 MR. HIPPLE: But I --

13 THE COURT: Why didn't you bring it up  
14 earlier?

15 MR. HIPPLE: Because then I was going down  
16 the list. I haven't gotten to that yet.

17 THE COURT: All right, go ahead. Start, ask  
18 your questions.

19 BY MR. HIPPLE:

20 Q All right, back to the fee engagement letter.

21 THE COURT: Wait a minute, no. You had --  
22 Mr. Pederson --

23 MR. PEDERSON: I'm sorry, you said go back to  
24 your questions. I thought you meant --

25 THE COURT: No, Mr. Pederson, I made --

Mr. Geisser - Recross

285

1 MR. PEDERSON: -- go back to the list.

2 THE COURT: -- a ruling. You're done.

3 MR. PETERSON: Okay.

4 THE COURT: You read your prepared list.

5 MR. PETERSON: I didn't prepare it, Your  
6 Honor.

7 THE COURT: Well, somebody prepared a list.

8 MR. HIPPLE: Okay.

9 THE COURT: Let's go over this again.

10 MR. HIPPLE: Yes, I have a list here.

11 THE COURT: And Mr. Hipple had difficulty  
12 reading it. And I, in order to allow him to -- someone  
13 to articulate those questions, I allowed you to read  
14 them. You finished reading them.

15 Then Mr. Hipple thought of some additional  
16 questions. Do you remember we had an objection from  
17 Mr. Berkowitz about that? I said well, Mr. Pederson  
18 has finished his -- his prepared questions were -- they  
19 were finished. And I'm not going to permit you to read  
20 anymore questions.

21 MR. HIPPLE: Him?

22 THE COURT: Him.

23 MR. HIPPLE: Okay, so I can --

24 THE COURT: But you are limited to what he  
25 only brought up. You're not -- you can't open up this

Mr. Geisser - Recross

286

1 whole thing again. What questions do you have that  
2 relate to what he just asked?

3 (Pause in proceedings.)

4 THE COURT: You look like you're reading from  
5 a list of questions, is that right?

6 MR. HIPPLE: Yes.

7 THE COURT: Well, why didn't you read from  
8 those questions earlier?

9 MR. HIPPLE: That's what we've been doing.

10 THE COURT: No, but you had an opportunity to  
11 cross-examine him and you were reading the questions,  
12 and I let Mr. Pederson assist you and I let him read  
13 those questions. Why didn't you finish that at the  
14 time that you had the opportunity to do it?

15 MR. HIPPLE: What do you mean, just read all  
16 the questions first? Is that how it was --

17 THE COURT: Yes, it's your opportunity for  
18 cross-examination, yeah.

19 MR. HIPPLE: Well, that's what I thought we  
20 were doing.

21 THE COURT: Yes, but you finished your  
22 questions. You told me you were finished.

23 MR. HIPPLE: No, no, I said I was finished  
24 with that question and I just asked him about --

25 THE COURT: No, no, no. No.

Mr. Geisser - Recross

287

1 MR. HIPPLE: This --

2 THE COURT: A half an hour ago you told me  
3 you were finished your questions and then Mr. Berkowitz  
4 had a chance --

5 MR. HIPPLE: No, that was a mistake, Your  
6 Honor, okay?

7 MR. PEDERSON: I think that your confusing is  
8 because we were going back and forth. So he was  
9 finished the questions. He had interjected himself  
10 that we're not here, and I was going to continue  
11 reading the questions. So when he said he's finished  
12 he was finished his own questions that were not on this  
13 list and I was going to start reading again. That's  
14 what happened.

15 THE COURT: Well, you're a lawyer. You  
16 understood this. Why didn't you speak up?

17 MR. PEDERSON: I don't practice law, Your  
18 Honor.

19 THE COURT: Well, you went to law school.  
20 You should know that. All right, go ahead. Let's  
21 finish your questions. Go ahead. I want to give you  
22 every opportunity to present your case. Go ahead.

23 MR. HIPPLE: Yeah, I need that.

24 THE COURT: When you answer me and say you're  
25 finished you got to realize there's consequences.

Mr. Geisser - Recross

288

1 MR. HIPPLE: Okay.

2 THE COURT: The next time --

3 MR. HIPPLE: I didn't understand that part.

4 THE COURT: The next time you got to be aware  
5 of that.

6 MR. HIPPLE: All right, I will be, Your  
7 Honor. Okay.

8 BY MR. HIPPLE:

9 Q Back to your fee engagement letter, it is fair to  
10 say that you provided a report that is consistent with  
11 the scope of the engagement set forth in that letter?

12 (Pause in proceedings.)

13 A Is that a question?

14 Q The question -- okay. I'll read it again. Back to  
15 your fee engagement letter, is it fair to say that you  
16 provided a report that is consistent with the scope of  
17 the engagement set forth in the letter?

18 A Yes.

19 Q Is it fair to say that you were not retained to  
20 determine the fair market value of any particular list  
21 of assets, right?

22 (Pause in proceedings.)

23 A Can you tell me what exhibit the engagement letter  
24 is because I closed up the binder. I apologize, but I  
25 thought --



Mr. Geisser - Recross

289

1 Q 30 --

2 A -- we were done with this.

3 Q 38.

4 (Pause in proceedings.)

5 A The engagement letter reads, in the second  
6 paragraph, "You have engaged us to perform a  
7 calculation of value of SCIX, LLC/Steel Seal, LLC/Steel  
8 Seal Pro, LLC. Our procedures will include analysis of  
9 several bank accounts directed toward estimating the  
10 cash flow distributed to the owners/insiders of the  
11 subject companies."

12 Q But, basically the bank accounts?

13 A Well, the focus was on the cash flows because, as I  
14 testified earlier --

15 Q Could you read the next sentence also?

16 A Can I finish my response? As I testified earlier,  
17 I was operating under the impression that there was  
18 minimal tran -- minimal assets that were transferred at  
19 the time, physical assets. It was really more of a  
20 cash flow situation.

21 We subsequently became aware of this list of  
22 assets. At the time I drafted this engagement letter,  
23 I was not aware of that. So in drafting the engagement  
24 letter, my focus was on the cash flows.

25 Q All right. Can you read the second after that,

Mr. Geisser - Recross

290

1 read on "After determination"?

2 A "After determining the distributions of the  
3 companies, we will apply an estimated capitalization  
4 rate or other metric typically used to value small  
5 businesses to produce an indicated value. It is  
6 understood that our opinion will be limited to the  
7 available records and the calculation will be used  
8 exclusively in connection with the above captioned  
9 matter."

10 Q An estimated capitalization rate, where did you  
11 come up with that?

12 A One of the methodologies that you can use in  
13 valuing a business is called the income approach. The  
14 income approach uses something called a capitalization  
15 rate.

16 When I was considering this engagement at an  
17 early stage I didn't know all the parameters of what I  
18 was dealing with at that time. So, in describing  
19 generally what we were going to do, I was trying to say  
20 in the engagement letter we're generally going to use  
21 these valuation methodologies that may be available to  
22 us.

23 As I started to drill down and understand  
24 better what was going on, it became apparent to me that  
25 a capitalization rate was no an appropriate methodology

Mr. Geisser - Recross

291

1 to use, or certainly a less preferred methodology, and  
2 that there was a more direct, more appropriate, better  
3 way to estimate value. And that was I eventually came  
4 to use a market valuation approach using the seller's  
5 discretionary earnings metric. And that's what I refer  
6 to here, "or other metric." That's what that refers  
7 to. When I said, "other metric," those are database  
8 metrics that are commonly used in doing valuation work.

9 (Pause in proceedings.)

10 Q Well, the phrase, "fair market value" does not  
11 appear anywhere in your fee engagement letter, right?

12 A Agreed.

13 Q And a standard of measures of the fair market value  
14 of assets would include what demand of -- on the open  
15 market for such assets would be, right?

16 A Assets meaning what? What do you mean "assets"?  
17 What are you referring to?

18 Q Sales. Assets.

19 A Well, the objective here is to value an income  
20 stream. That's what -- that's what they did and the  
21 letter says. So we're not valuing sales.

22 Q So, basically, your projections are -- naturally,  
23 I'm going to go to 2012, okay? Correct? As far as  
24 what's going on with the company now, you have no  
25 idea --

Mr. Geisser - Recross

292

1 A It's --

2 Q -- basically?

3 A Our valuation is an estimate as of October 2010  
4 when the -- when the value -- when the exchange took  
5 place for what we conclude was not reasonably  
6 equivalent value. It's at that moment in time that we  
7 needed to address.

8 Q And the standard of measures of the fair market  
9 value of assets would include what the demand on the  
10 open market or such assets would be, correct?

11 A Again, I ask -- I have to ask you to clarify. What  
12 assets are you referring to?

13 Q All right, let me have you look at 224-20.

14 (Pause in proceedings.)

15 Q 224-20.

16 A I have it.

17 Q Would you read it, please?

18 A "Question: Can those -- if just assets are  
19 transferred, are there ways to determine the fair  
20 market value of just those assets?

21 "Answer: Sure."

22 Q 225-17.

23 MR. BERKOWITZ: I'm going to raise an  
24 objection here, Your Honor, to the last question. It's  
25 a little late, but on page 22, it seems that that

Mr. Geisser - Recross

293

1 question that was just asked pertains to the 528 cases  
2 of Steel Seal.

3 Mr. Geisser had a question about what assets  
4 are we talking about, and I guess my question -- my  
5 objection is we need a clarification if that's the  
6 asset we're talking about?

7 THE COURT: Is that the asset, Mr. Hipple,  
8 that --

9 MR. HIPPLE: No.

10 THE COURT: That's right. In the deposition,  
11 that's what he was talking about, right?

12 MR. HIPPLE: No, he said okay.

13 THE COURT: Let me ask you, Mr. --

14 MR. HIPPLE: Oh, yeah, the assets? Yes.

15 THE COURT: Yeah. The assets, the inventory.

16 MR. HIPPLE: The assets that I took.

17 THE WITNESS: Yes. If -- Your Honor, can I  
18 interject?

19 THE COURT: Yes.

20 THE WITNESS: If you look back on page 222,  
21 it refers to the 528 cases of material. I'm just --  
22 I'm kind of skimming it right now, but --

23 THE COURT: So that's what you were referring  
24 to when you answered the question?

25 THE WITNESS: I'm just -- as I look over the

Mr. Geisser - Recross

294

1 pages, it looks to me like that's what we were talking  
2 about.

3 THE COURT: Okay.

4 THE WITNESS: I'm looking at page 221, and  
5 for Exhibit O, "Somebody had to pay for this inventory  
6 that was purchased here, correct? Answer: Correct."

7 THE COURT: Okay.

8 THE WITNESS: And it's making reference to  
9 the value of that inventory that's being discussed  
10 throughout those pages. So that's -- I'm addressing  
11 the question, "Is there a way to value that inventory."

12 THE COURT: Right.

13 THE WITNESS: And based on just that little  
14 response that I gave there, the answer is "Yes." It's  
15 the --

16 BY MR. HIPPLE:

17 Q "Sure."

18 A It's the same as --

19 Q You said "Sure," right.

20 A Sure. And it's the way that we walked through it  
21 this morning on this board up here.

22 Q All right. But, would you agree now that we talked  
23 about the England and the UK that perhaps this could be  
24 a mistake?

25 A We used the information that was available to us at

Mr. Geisser - Recross

295

1 the time. If there's -- if that information and those  
2 was incorrect, certainly I stand to hear that  
3 correction.

4 But, all I can say was based on what was  
5 available to me at the time I was giving this  
6 deposition, I was just doing the same kind of  
7 extrapolation like we did on the board this morning,  
8 multiplying the cases, the bottles, the number of  
9 bottles per case, the selling price per bottle, to come  
10 up with a number, because that's the way you would  
11 value it. It's valued at the selling price of the  
12 material.

13 So, what we're trying to derive is simply  
14 answer the question, if you took physical possession of  
15 these bottles of material, what were they sold for?  
16 What was the value of those bottles that you took  
17 possession of?

18 Q So, basically, you never saw the sheet that was in  
19 the exhibits that -- with the cost analysis of what I  
20 received?

21 A I'm sorry, I don't know what you're referring to.  
22 If you want to --

23 Q Okay.

24 A -- show me that exhibit --

25 Q There's --

Mr. Geisser - Recross

296

1 A -- I'll be happy to take a look at it.

2 Q I don't know what exhibit.

3 MR. HIPPLE: Do you know the exhibit?

4 THE COURT: I think we went over this  
5 already.

6 MR. HIPPLE: What?

7 THE COURT: We went over this already.

8 MR. HIPPLE: No, this is my cross exhibit  
9 that has --

10 THE COURT: Well, you showed us the UK sales  
11 and --

12 MR. HIPPLE: No, no, this is an exhibit, Your  
13 Honor, showing exactly what I received for the assets.

14 THE COURT: All right. Go ahead. What  
15 exhibit are you talking about?

16 (Pause in proceedings.)

17 THE COURT: We're going to stay until you're  
18 finished. You know, you don't want him to come back  
19 tomorrow, do you? No.

20 MR. HIPPLE: We're going to have to, Your  
21 Honor.

22 THE COURT: Well, we're staying because I'm  
23 sure he has other things to do and he's being paid by  
24 the hour here, so let's try to get him finished.

25 MR. BERKOWITZ: Your Honor, I have three



Mr. Geisser - Recross

297

1 witnesses tomorrow, which will be the end --

2 THE COURT: Yes.

3 MR. BERKOWITZ: -- for me.

4 THE COURT: We'll start at 9:00 tomorrow,  
5 9:00 to 1:00, because --

6 MR. BERKOWITZ: They're subpoenaed --

7 THE COURT: -- we have a half day tomorrow.

8 MR. BERKOWITZ: -- to be here. I think when  
9 I issued the subpoenas we didn't have the renewed  
10 schedule. I think they will be here -- I think the  
11 subpoenas were for 9:30, although I think I contacted  
12 them.

13 THE COURT: All right. Well, when they --  
14 when they come you can start it because I -- you know,  
15 I'm going until 1:00 tomorrow.

16 MR. BERKOWITZ: Yes. And I should be --

17 THE COURT: All right.

18 MR. BERKOWITZ: I assume that I will be done  
19 well before 1:00.

20 THE COURT: Right.

21 (Pause in proceedings.)

22 MR. HIPPLE: Do you remember? It was an  
23 exhibit. I know it --

24 (Pause in proceedings.)

25 MR. HIPPLE: D-52.

Mr. Geisser - Recross

298

1 THE COURT: The black binder.

2 (Pause in proceedings.)

3 MR. BERKOWITZ: Your Honor, I don't want to  
4 interrupt him during his questioning, but I would like  
5 to raise an objection. I believe this exhibit was  
6 produced and prepared in conjunction with the motions  
7 for summary judgment, I believe, and it was after Mr.  
8 Geisser's report.

9 MR. HIPPLE: Well --

10 MR. BERKOWITZ: I believe that's --

11 MR. HIPPLE: No, I think this --

12 MR. BERKOWITZ: -- correct.

13 MR. HIPPLE: This was --

14 THE COURT: Why don't you ask Mr. Geisser,  
15 Go ahead, ask your question.

16 MR. HIPPLE: Okay.

17 BY MR. HIPPLE:

18 Q Are you familiar with this report?

19 A I don't believe I've seen this document before.

20 Q So, therefore, it had no part of your evaluation?

21 A Correct.

22 Q But you -- basically, you did look through all of  
23 the documentation, right?

24 A I --

25 Q Before you did your report?

Mr. Geisser - Recross

299

1 A Mr. Hipple, the documents that I considered are  
2 specifically delineated in one of the exhibits to the  
3 report. Under the Federal Rules, we're required to  
4 list the documents that we relied upon, and there's a  
5 list. I can cite to the exhibit, but there's an  
6 exhibit which delineates what documents we had  
7 available to us.

8 Q Again, the other question I had here is now you are  
9 aware that Clement Hipple prepared an inventory of the  
10 SCI access -- assets you foreclosed on? This is a very  
11 important report because this is what I foreclosed on.  
12 I can't understand why -- I know it was in the -- prior  
13 to your -- prior to you redoing your report. All  
14 right, hold on for one minute.

15 (Pause in proceedings.)

16 Q So, basically, you're saying you did not see it  
17 before you did your report, is that correct?

18 A If you're referring to Exhibit D52, the first time  
19 I've --

20 Q Yes.

21 A -- ever seen that is --

22 Q No?

23 A -- two minutes ago.

24 Q Fine. You would agree with me that one of the  
25 issues is -- in this case is how much Mr. Hipple

Mr. Geisser - Recross

300

1 realized out of the assets that he took possession of  
2 October 10 -- October 2010, correct?

3 A Yes.

4 Q And the answer to that question is that he took the  
5 equivalent cash value of those assets, right, cash  
6 value?

7 A Generally, yes.

8 Q Going back to the inventory, you and Mr. Berkowitz  
9 made the specific decision that you would -- you were  
10 not going to get involved in performing an evaluation  
11 of what was on the inventory, is that correct?

12 A Let me back up. At the time I did my report, I was  
13 not aware of that inventory sheet. That's the way I  
14 testified. That's the way I testified at my  
15 deposition. I was not aware of that. Had I been aware  
16 of that, I would have incorporated it into the report,  
17 and I was not aware of that inventory and, therefore,  
18 did not include it.

19 Q This is a very important document. All right.  
20 Let's go to 30-21 of your deposition.

21 (Pause in proceedings.)

22 A Page 30?

23 Q Yeah, page -- yeah, 30-21. Let me -- let me see it  
24 first.

25 (Pause in proceedings.)

Mr. Geisser - Recross

301

1 A I have it.

2 Q Okay. Can you read it?

3 (Pause in proceedings.)

4 Q Go ahead. I'll read it. "Well" --

5 A I can read it. I wasn't clear what --

6 Q Okay.

7 A Question -- and you just tell me where to stop.

8 Line 21. "Question: "Well, did Mr. Berkowitz tell you  
9 that?

10 "Answer: "I have a general recollection that  
11 we had a discussion about what to include in the  
12 calculation of value at the time we did it, and because  
13 there was a representation from your client that it was  
14 a relatively small amount of inventory that had been  
15 transferred, that we decided not to get involved in  
16 trying to do a separate valuation of the inventory as  
17 part of the calculation of value.

18 "Question: Prior to preparing your report,  
19 did you have any conversations with Teresa Hipple  
20 directly?

21 "Answer: No."

22 Q No further. Okay. So, basically, you knew about  
23 -- I mean Mr. Berkowitz knew that the report was there?

24 MR. BERKOWITZ: Your Honor, objection.

25 THE COURT: Sustained. Okay.

Mr. Geisser - Recross

302

1 (Pause in proceedings.)

2 BY MR. HIPPLE:

3 Q Okay. And you were never, ever provided the  
4 inventory before preparing your report, correct?

5 A Correct.

6 (Pause in proceedings.)

7 Q Okay, here we go. Now, the opinion -- the opinion  
8 you give in this action is that based on the records  
9 available and the stated assumptions, a reasonable --  
10 reasonably equivalent value for the transfer of SCIX  
11 assets as of October 13th, 2010, would have been 1.75  
12 million?

13 A Correct.

14 Q Okay. Your opinion explicitly references SCIX  
15 assets as of October 13th, 2010, right?

16 A Yes.

17 Q These would have been assets belonging to SCIX as  
18 of the date -- of that date, right? The date of  
19 October 13th, 2010?

20 A Yes.

21 Q But at the time you prepared your report, you had  
22 no understanding of what the hard assets SCIX had just  
23 prior to the transfer that is the subject of this  
24 litigation, main subject of this litigation?

25 A You'll recall my earlier discussion, okay. I had

Mr. Geisser - Recross

303

1 no balance sheet. We had no balance sheet information,  
2 so when you talk about assets and liabilities, as the  
3 case may be, the place that you look in the financial  
4 statements is the balance sheet. We had no balance  
5 sheet, so it was not possible for me to begin to  
6 evaluate a balance sheet.

7 There were no Quickbooks produced, there were  
8 no financial statements including a balance sheet. The  
9 only thing that we had back in 2010 period, as  
10 reflected on Exhibit A and B of my report, was Brian  
11 Hipple's schedule C, which is in the form of an income  
12 statement used for tax purposes.

13 (Pause in proceedings.)

14 Q You did not know how much inventory SCIX had as of  
15 the date, right? Correct?

16 A Correct. At the time -- and I'll refer you back to  
17 the passage that we just read out of my deposition that  
18 there was a representation to me that there was a very  
19 small amount of physical assets that were taken at that  
20 time. And because that was a representation I  
21 understood to be the case, we put that aside and said  
22 hey, let's focus on the cash flows that are being  
23 generated out of this enterprise.

24 It was only later that I became aware that  
25 there was a list of assets that were actually

Mr. Geisser - Recross

304

1 transferred at the time -- at that time in October of  
2 2010, and at that point in time, I said this is  
3 relevant to the overall evaluation process, most  
4 particularly when you're dealing with readily saleable  
5 inventory.

6 Q Right. And you keep using the terminology in your  
7 mind, "small amount of inventory," is that correct?  
8 I've heard you say it quite a few times.

9 A That was what I understood to be the case and  
10 that's why I wasn't particularly concerned about it at  
11 the time we approached it using the cash flows. I  
12 didn't think there was information available that would  
13 be useful. I didn't have a balance sheet. I'm  
14 repeating myself, but I didn't have a balance sheet.

15 Q And you did not know what SCI account receivables  
16 were as of October 13th, is that correct?

17 A That's correct.

18 MR. HIPPLE: I'm going as fast as I can, Your  
19 Honor.

20 THE COURT: Okay.

21 MR. HIPPLE: All right? Because these are  
22 just -- I just want to get these questions into the  
23 record.

24 BY MR. HIPPLE:

25 Q And you did not know the fair value -- market value



Mr. Geisser - Recross

305

1 of the equipment, computers, furniture, packing  
2 material, and/or any car SCIX had in its possession as  
3 of October 13, correct?

4 A Correct, because I had no balance sheet. I had no  
5 list of assets, and that's why we went to the cash flow  
6 process.

7 MR. HIPPLE: I know Your Honor wants to get  
8 out of here, so if it's just a yes or no answer, we'll  
9 go yes or no, okay?

10 BY MR. HIPPLE:

11 Q Are you -- and you never saw a customer list,  
12 correct?

13 A Correct.

14 Q And you do not know what, if any, liens existed on  
15 the assets of SCIX as of October 13th, correct?

16 A Correct, because we had no balance sheet.

17 Q And you did not perform any UCC search for SCIX  
18 prior to preparing your report, correct?

19 A Correct.

20 Q And you did not perform any judgment search for  
21 SCIX prior to preparing your report, correct?

22 A Correct.

23 Q And you did not take into consideration that  
24 Clement Hipple claimed he had a security interest in  
25 the assets of SCIX, correct? Or no, once -- okay.

Mr. Geisser - Recross

306

1 Correct?

2 A Correct, and I would have expected if that was  
3 going to be an issue, that I would have seen that in a  
4 rebuttal report, but there was nothing in the rebuttal  
5 report that addressed that.

6 Q Okay. And prior to coming to you opinion in this  
7 case, you did not know the circumstances surrounding  
8 the security interest Clement Hipple took in SCIX  
9 assets, fair?

10 A Correct, that was not something that I took into  
11 consideration.

12 Q And with respect to the debt owed by SCIX to  
13 Clement Hipple that is the subject of this litigation  
14 and any opinion as to whether that debt was valid or  
15 invalid would fall outside the scope of your  
16 engagement, correct?

17 MR. BERKOWITZ: I'm going to object to the  
18 question, but I --

19 THE COURT: Okay.

20 MR. BERKOWITZ: -- think --

21 THE COURT: I'll sustain the objection.

22 MR. HIPPLE: No?

23 THE COURT: I'm sure the plaintiff is going  
24 to say, I believe, that your debt is not the subject of  
25 this litigation. It may be an issue, but it's not the

Mr. Geisser - Recross

307

1 subject. Is that part of your objection?

2 MR. BERKOWITZ: Yes.

3 THE COURT: All right.

4 MR. BERKOWITZ: Sure, Your Honor.

5 THE COURT: So I'll sustain the objection.

6 MR. HIPPLE: What's that mean? I --

7 THE COURT: That means he can't answer that  
8 question unless you rephrase it in some way.

9 MR. HIPPLE: Okay. All right, let's see if I  
10 can try to rephrase it.

11 BY MR. HIPPLE:

12 Q All right, go to the -- yeah, 49-16. Page 49-16.

13 (Pause in proceedings.)

14 A Do you want me to read the question?

15 Q Yeah, 16.

16 A "Questions: With respect to whether or not the  
17 debt owed by SCIX to Clem Hipple was valid or invalid,  
18 is it fair to say that providing an opinion on that  
19 issue was outside the scope of your assignment?"

20 "Answer: I agree, correct."

21 Q Okay. Now go to 50-4. Keep going. I'm sorry.  
22 I'm sorry, keep going until you get to 50-4.

23 A "Question: Is it fair to say you have no opinion  
24 on that particular issue?

25 "Answer: It's outside the scope of my

Mr. Geisser - Recross

308

1 assignment. I have no opinion, correct."

2 Q Okay.

3 (Pause in proceedings.)

4 Q Now, you knew at the time that you attributed a  
5 \$1.75 million valuation of the assets of SCIX as of  
6 October 13th, 2010, you understood that SCIX had three  
7 patents in its name, right? Correct?

8 A I had a general understanding there was a patented  
9 product. I did not do a separate evaluation of what  
10 patents were in place.

11 Q In other words, you didn't know that -- you were  
12 never told that there were three patents when you were  
13 doing a valuation of the corporation?

14 A I believe my report makes specific reference to it  
15 being a patented product. I don't think I put the  
16 number three next to it.

17 Q But if I told you it was originally three, you  
18 don't remember that part?

19 A I think I answered the question.

20 Q Okay. Mr. Berkowitz told you -- told you that,  
21 right, about the patents?

22 A Yes, I believe the complaint and the pleadings talk  
23 about the patents. So this was general -- this was  
24 information that was in the -- within the information I  
25 considered.

Mr. Geisser - Recross

309

1 Q And you relied upon the statement that Mr.  
2 Berkowitz told you, correct?

3 A What statement are you referring to?

4 Q That there were patents.

5 A I think I just answered that question. I think it  
6 was in the pleadings.

7 Q And those three patents are documented, listed on  
8 the documents -- considered page of your report, right,  
9 your Exhibit H, item N.

10 MR. HIPPLE: I'm moving, Your Honor, as best  
11 as I can.

12 (Pause in proceedings.)

13 THE WITNESS: I'm looking at Exhibit H to my  
14 report, which is entitled "Documents Considered."  
15 There's nine items that are listed. I don't see any  
16 reference to patents in that list, specifically.  
17 There's certainly reference to pleadings in that list,  
18 but it doesn't reflect patents, the word, "patents."

19 BY MR. HIPPLE:

20 Q If you go down to item N, it says SCIX patents,  
21 with an S.

22 A Did you say item N, as in Nancy?

23 Q N, as in Nancy, yes.

24 MR. BERKOWITZ: Your Honor, if I could help?

25 THE COURT: Sure.

Mr. Geisser - Recross

310

1 MR. BERKOWITZ: I think there's a page in  
2 front of that, Mr. Geisser. The documents --

3 THE WITNESS: Oh, I'm sorry. Thanks.

4 MR. BERKOWITZ: -- considered -- these were  
5 the documents --

6 THE WITNESS: Yeah.

7 MR. BERKOWITZ: -- you considered.

8 THE WITNESS: Right. Oh, I see, I'm sorry.  
9 There was two pages. I was looking at the first page  
10 only.

11 BY MR. HIPPLE:

12 Q And it has an S on it, meaning more than one  
13 patent, is that correct?

14 A Well, to be -- to be clear about it, the document  
15 that I'm looking at is "Exhibits in Support of  
16 Plaintiff's Motion for Injunctive Relief," and there's  
17 exhibits listed from one through item Q. Those  
18 documents were provided to me as a group.

19 Q Right. But you would have read -- you would have  
20 read them, correct?

21 A I certainly went through them or my staff went  
22 through them, one of the two of us.

23 Q So then you would have had knowledge that there was  
24 more than one patent because this says "patents,"  
25 correct?

Mr. Geisser - Recross

311

1 A I don't remember what I knew at the time I did my  
2 report.

3 Q Okay. But you do remember reading that, right?

4 A Remember reading what?

5 Q That section where it says "patents."

6 A I had those documents. I don't have a specific  
7 recollection of reading those documents right now, two  
8 years after the fact.

9 Q So, basically, there's a possibility you did not  
10 read the documents?

11 MR. BERKOWITZ: Objection. I'm going to  
12 object to the relevance of this --

13 THE COURT: All right.

14 MR. BERKOWITZ: -- line of questioning.

15 THE COURT: I'll sustain the objection.

16 MR. HIPPLE: What was that?

17 THE COURT: Sustained. He has to ask a new  
18 question.

19 (Pause in proceedings.)

20 BY MR. HIPPLE:

21 Q In fact, you assumed that Steel Seal Pro was using  
22 the patent when you considered the company's cash flow  
23 in 2011, correct?

24 A It was not really important to my analysis. I was  
25 doing a calculated value based on the cash flows and

Mr. Geisser - Recross

312

1 distributions that were being taken out by the  
2 controlling principals.

3 Q 82-22.

4 (Pause in proceedings.)

5 Q To 83.4.

6 A Page 82, line 22?

7 Q Yes, right, all the way up to 83.4.

8 A Page 82, line 22: "Okay. So when you were looking  
9 at the cash flow in 2011 when the business is being  
10 operated under Steel Seal Pro, are you assuming that  
11 the business is using those patents?

12 "Answer: Yes, by virtue of the product being  
13 sold. We have a continuous stream of products being  
14 sold here, uninterrupted stream of product sales,  
15 whether it was with SCIX or Steel Seal Pro or Complete  
16 Group or Triple D Management" -- I think she means  
17 Triple B Management -- "we had a continuous revenue  
18 derived from the sale of the same product. My  
19 understanding is further that the product had patent --  
20 a patent -- four patents associated with it."

21 Q Thank you. And for the purposes of determining  
22 fair market value of a business, the fact that the  
23 product is patent would be a factor considering,  
24 correct -- considered, correct?

25 A If I was doing an opinion of value, it's a factor I



Mr. Geisser - Recross

313

1 may consider, sure.

2 (Pause in proceedings.)

3 Q And it is fair to say that you placed additional  
4 value on the Steel Seal product to the extent it had  
5 patents because that shut out other sellers of the  
6 Steel Seal product, correct?

7 A I used the information about patents as background  
8 material only in the sense I was trying to get an  
9 understanding of what the nature of the business was.  
10 From my standpoint, in doing a calculated value, what  
11 was important to me was what is the cash flow that's  
12 been generated out of this business.

13 Whether it had a patent or not is only  
14 relevant to the amount of cash flow that it generates  
15 and, also, it's being sold at a higher profit margin  
16 than we're talking about. Typically, when you have  
17 patents you have high profit margins.

18 That's -- let me give you a classic example,  
19 like in the drug industry. You know you can have a  
20 very high profit margin in the drug industry because  
21 you have patents that have a given useful life to them,  
22 and that justifies that high margin.

23 And so that when I'm looking at the numbers  
24 associated with this particular product I see that  
25 there's a very high profit margin, which says to me

Mr. Geisser - Recross

314

1 that there's probably a limited number or no other  
2 competing products in this particular space that we're  
3 dealing with.

4 Q All right, I just have one more question before we  
5 go to the deposition. Basically, and from a company  
6 standpoint, right, and I can understand any company can  
7 have a high profit margin, as long as it has sales that  
8 can cover its overhead and its expenses, correct?

9 A Correct.

10 Q Okay. All right, let's go to 86.19, 86-19.

11 A Page 86, line 19.

12 Q 19.

13 A "Question: So is it fair to say that there is an  
14 enhanced value to the Steel Seal product because it is  
15 patented, as compared to if it wasn't patented?

16 "Answer: To the extent other sellers are  
17 shut out of that -- the ability to sell that product,  
18 there's additional value associated with that."

19 Q Okay. And you took that -- you took enhanced value  
20 into consideration in your evaluation, correct?

21 A Mr. Hipple, again, I'll repeat myself that it's  
22 reflected in the cash flows, which was at the focus of  
23 the evaluation that we did. We did not separately  
24 value the patents that are involved in this matter.

25 Q Okay. Let's go to 87-4.

Mr. Geisser - Recross

315

1 A I have it.

2 Q Question?

3 A "Question: Okay. And did you take that into  
4 consideration in your valuation?

5 "Answer: I valued the stream of income that  
6 was associated with that."

7 THE COURT: Do you know you're doing this  
8 improperly? You're asking questions, you're getting  
9 the answer you want, and then you're reading the  
10 deposition where he previously said the same thing.

11 There's nothing inconsistent. You only use  
12 the deposition if he says something inconsistent than  
13 what he's saying today. But he's telling you -- he's  
14 giving you the answer that you expect, and then you're  
15 just reading the deposition which is just reaffirming  
16 what he said here today.

17 MR. HIPPLE: Well --

18 THE COURT: So, only if he says something  
19 different in the deposition than what he says today can  
20 you read the deposition.

21 MR. HIPPLE: Okay. But I can just go  
22 directly to the deposition if I want?

23 THE COURT: Well, to speed things up, I'll  
24 let you do that, yeah. Typically, you can't do that,  
25 but I'll allow you to do that.

Mr. Geisser - Recross

316

1 MR. HIPPLE: Okay.

2 (Pause in proceedings.)

3 BY MR. HIPPLE:

4 Q And that -- and that the enhancement value would  
5 assume that the patents were active as of October 13,  
6 2010, correct?

7 A I'm repeating myself. We evaluated the cash flow  
8 stream. We did not separately evaluate the patents.

9 Q But if a patent is expired, it has no value,  
10 correct?

11 A I can't speak to that issue.

12 Q But, you did not investigate whether any of the  
13 three SCIX patents you referred to in your report were  
14 active or expired as of the date -- never mind, let me  
15 just go to the deposition. Excuse me. 80.7.

16 (Pause in proceedings.)

17 A Page 80, line seven.

18 Q Seven. To 81-9.

19 MR. BERKOWITZ: I'm going to object. I  
20 believe this question has been asked before. It's  
21 talking about Exhibit H, which I believe then refers to  
22 item N, which are the documents on the list --

23 THE COURT: That were produced --

24 MR. BERKOWITZ: -- that were previously asked  
25 that Mr. --

Mr. Geisser - Recross

317

1 THE COURT: They came after --

2 MR. BERKOWITZ: -- Geisser used.

3 THE COURT: It was on the sum -- it was  
4 attached to the summary judgment motion?

5 MR. BERKOWITZ: Yes.

6 THE COURT: Yes, I'm going to sustain the  
7 objection.

8 MR. HIPPLE: Okay, we'll go on, Your Honor.

9 (Pause in proceedings.)

10 MR. HIPPLE: All right.

11 (Pause in proceedings.)

12 BY MR. HIPPLE:

13 Q I direct your attention to Exhibit E-3, page four,  
14 dated 2-01-12, check 531, SCIX expense.

15 MR. BERKOWITZ: I'm sorry.

16 THE WITNESS: You got to tell --

17 BY MR. HIPPLE:

18 Q Okay, this is complicated, okay? E-3, the section  
19 E-3 -- I mean --

20 A E-3 of my report?

21 Q Yes. Page four. Page four dated February 1st,  
22 2012, check number 531.

23 (Pause in proceedings.)

24 THE COURT: All right, do you have a  
25 question?

MR. HIPPLE: I think it says 537.

MR. BERKOWITZ: What page of the grid? THE  
COURT: Page four.

MR. BERKOWITZ: Page four?

THE COURT: I think it's entry 2-1-12.  
What's your question.

MR. HIPPLE: It's 537. No, but I'm sorry, I  
gave you the wrong number.

THE COURT: What's your question.

MR. HIPPLE: Well, it's gone to this  
disbursements -- distributions I mean.

MR. BERKOWITZ: I'm sorry, which -- I don't  
see the check we're talking about.

MR. HIPPLE: 537 on 2-1 for \$300 down towards  
the bottom, SCIX expenses.

MR. BERKOWITZ: Check 537?

MR. HIPPLE: Yep.

MR. BERKOWITZ: For \$300?

MR. HIPPLE: Yep.

THE COURT: What's the question?

MR. BERKOWITZ: Eastern and Grey, is that --

THE COURT: What's the question?

MR. BERKOWITZ: -- what you're saying?

MR. HIPPLE: It's in distribution, yes.

THE COURT: What's the question? What's the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Mr. Geisser - Recross

319

1 question?

2 MR. HIPPLE: It shouldn't be in distribution.

3 THE COURT: Okay. Mr. Geisser?

4 THE WITNESS: Check -- just to be clear about  
5 this, check 537 for \$300 has a designation on it, it  
6 says "Payee SCIX Expense," and we have it classified as  
7 a distribution. I would have to take a look at the  
8 check itself to be able to answer that directly.

9 I suspect that probably Bob Heit (ph), my  
10 associated who prepared this, probably looked at the  
11 check and made a determination that it was not an  
12 expense item, that it was in the nature of a  
13 distribution. I don't know without looking at the  
14 check. It's possible that it went into a personal bank  
15 account. I just don't know why it was classified as a  
16 distribution.

17 MR. BERKOWITZ: Your Honor, can I raise an  
18 objection --

19 THE COURT: Yes.

20 MR. BERKOWITZ: -- just to help move these  
21 things along? Mr. Geisser, if you look at the top of a  
22 page, this is a Steel Seal Pro bank account and you  
23 list -- that appears to be an SCIX expense. Now, is  
24 that a business expense for Steel Seal if it's an SCIX  
25 expense?



Mr. Geisser - Recross

320

1 THE WITNESS: Facially, it would seem not to  
2 be.

3 MR. BERKOWITZ: So you treated that \$300 as a  
4 distribution because it paid an SCIX bill?

5 THE WITNESS: I don't know right now as I sit  
6 here. I -- you know, if we pulled the check out, I  
7 physically looked at it, I might be in a position to  
8 answer the question better.

9 I know the process that we used that. I work  
10 closely with Bob Heit from my often who did these  
11 underlying schedules. Bob is pretty careful about the  
12 way he classifies things. We probably talked about it,  
13 and there was probably a reason why we classified this  
14 as such, because if you look at that page, I'm looking  
15 at page four now, of all the items that are listed on  
16 that page, there's only two items that are listed as  
17 distributions, one is to A&C Builders for \$9,000, the  
18 other is the \$300 check.

19 So in terms of the classification process  
20 that Bob Heit went through, and he's the person who  
21 physically did this under my supervision, 95 percent of  
22 these are classified as expense. It was only those two  
23 items that are classified as distributions.

24 So I can't -- right now as I sit here, I  
25 can't give you an answer to that, but I know the

Mr. Geisser - Recross

321

1 process is looking at the check, looking at the  
2 information that appears on the check, and making a  
3 judgment about whether it's expense or not expense.

4 THE COURT: Next question, please.

5 BY MR. HIPPLE:

6 Q You are not aware -- you are not aware as to  
7 whether SCIX, LLC, was formally dissolved after October  
8 13th, 2010?

9 MR. BERKOWITZ: Objection, relevance.

10 THE COURT: Overruled. Go ahead.

11 THE WITNESS: I'm not aware of the corporate  
12 restructuring that went on. My perspective, as I said  
13 in the report, is that I have one continuous business  
14 from the beginning of my study to the end of my study,  
15 it's selling the same product, and it's making  
16 distributions, and that's the approach that I took.

17 BY MR. HIPPLE:

18 Q And that's your -- that's your opinion then?

19 A Yes, sir, that's my opinion.

20 Q Okay. Again, you don't know one way or another --  
21 well, that's the same question, right, so you did  
22 answer that.

23 You are not aware of any agreement that would  
24 have precluded SCIX, LLC. from continuing to sell Steel  
25 Seal product after October 13th?

Mr. Geisser - Recross

322

1 A I'm sorry, can you repeat the question, please?

2 Q Okay. It says and you are not aware of any  
3 agreement that would have precluded SCIX from  
4 continuing to sell the Steel Seal product after October  
5 13th, 2010?

6 A No.

7 Q We were -- you were not provided any agreement  
8 containing a restricted covenant precluding either SCIX  
9 or Brian Hipple from marketing or selling the Steel  
10 Seal product, correct?

11 A Correct.

12 (Pause in proceedings.)

13 Q Are you aware of any or all entities that may have  
14 licensing rights to sell the patented Steel Seal  
15 product?

16 A No.

17 Q You do not know one way or another if Scientific  
18 Chemical has any license for SCIX or another entity to  
19 market or manufacture the Steel Seal product?

20 A No, that's not something I considered.

21 Q Okay. And, in fact, you have not seen any  
22 exclusivity agreement or other document granted Mr.  
23 Hipple, B.B.B., Complete Group, or Steel Seal, LLC, the  
24 exclusive right to sell the Steel Seal product -- I'm  
25 sorry, wait a minute. Don't answer that. To the

Mr. Geisser - Recross

323

1 deposition, if we --

2 MR. BERKOWITZ: I'm going to object to the  
3 question, Your Honor. Plaintiff's Exhibit 14, which  
4 Mr. Hipple testified to, is the license agreement from  
5 his company, Complete Group, to his son's company,  
6 Steel Seal Pro, which is an exclusive license between  
7 the two pertaining to the sale of Steel Seal.

8 THE COURT: All right, I'll overrule the  
9 objection. Go ahead, you can answer the question. Go  
10 ahead.

11 BY MR. HIPPLE:

12 Q Okay. Deposition 226-6, 17.

13 (Pause in proceedings.)

14 A Page 226, line 17.

15 Q No, I -- no, line six, I'm sorry.

16 A Line six.

17 Q To line 17.

18 A "Question: Sure. Let me ask you a different  
19 question. Have you seen an exclusivity agreement or  
20 any other document that grants Mr. Hipple or Triple B  
21 or Complete Group or Steel Seal, LLC, or Steel Seal Pro  
22 the exclusive right -- strike that -- not Steel Seal  
23 Pro, the other defendants, the exclusive right to  
24 manufacture, market, and sell the Steel Seal  
25 product?

Mr. Geisser - Recross

324

1 "Answer: No."

2 Q And you have not seen any information that would  
3 evidence that any of those entities have the exclusive  
4 right to market, manufacture, or sell the Steel Seal  
5 Product -- sorry again.

6 MR. HIPPLE: I'm sorry, Your Honor.

7 THE COURT: Well, you asked the question, so  
8 let's see what he says.

9 MR. HIPPLE: Okay.

10 THE COURT: You may not have to read the  
11 deposition.

12 THE WITNESS: Well, I think he's continuing  
13 with --

14 THE COURT: Oh.

15 THE WITNESS: -- line 18.

16 THE COURT: Go ahead.

17 THE WITNESS: Is that correct, Mr. Hipple,  
18 just to clarify? Line 18 --

19 BY MR. HIPPLE:

20 Q No, this is information. This is different. I'm  
21 asking you, and you have not seen any information that  
22 would evidence that any of those entities have the  
23 exclusive right to market, manufacture, or sell the  
24 Steel Seal Product?

25 A As I said on line 24, "Answer: "I haven't seen any

Mr. Geisser - Recross

325

1 documentation like that, no."

2 Q Thank you.

3 (Pause in proceedings.)

4 Q Taking a quick look at those individuals and the  
5 entities on page -- Exhibit D to your report,  
6 identifying as payees, they include A&C Building and  
7 Industrial Maintenance, American Express, Brian Hipple,  
8 Cash, Chase, Credit Card, Citizen Card, Clement Hipple,  
9 Friends School, Harrison Law Firm, American Honda  
10 Finance, Corporate" --

11 THE COURT: You don't have to read it all.  
12 We know what the exhibit is.

13 MR. HIPPLE: Okay. I'm sorry, Your Honor.

14 BY MR. HIPPLE:

15 Q Did I read that correctly?

16 A No.

17 Q Now for the purpose of your calculation of seller's  
18 discretionary earnings, you included as seller's  
19 earnings, discretionary earnings each and every payment  
20 made to all of these entities from October 2009 to  
21 February 2013, correct?

22 A I included the items that are listed in Exhibit D  
23 and supported by the underlying documents that define  
24 that in Exhibits D-1, 2, and 3. That's the answer to  
25 the question.

Mr. Geisser - Recross

326

1 Q All right. Now for the purpose of your  
2 calculations, you were told to do that by Mr.  
3 Berkowitz, right?

4 A "That," meaning what?

5 Q In other words, Mr. Berkowitz told you to identify  
6 all of these separately, all of these entities?

7 A Well, it's something we certainly talked about. We  
8 talked about going through and identifying the items  
9 that would be considered distributions in nature, and  
10 we talked about various specific ones.

11 Q Let me rephrase the question, okay? Did Mr.  
12 Berkowitz specifically give you names in reference to  
13 this paragraph?

14 A In reference to Exhibit D?

15 Q The names I just read that you have on this page,  
16 did Mr. Berkowitz specifically give you those names to  
17 sort?

18 A We certainly discussed these names because in the  
19 beginning, I didn't know who A&C Building and  
20 Industrial Maintenance was.

21 Q Okay. So --

22 A He explained that to me, certainly.

23 Q So then, basically, he gave you the names?

24 A He gave me some of the background names, and what  
25 we typically do when we analyze a bank account, we have

Mr. Geisser - Recross

327

1 that in digital format, so we'll sort that, right, and  
2 once it gets sorted, then there's names that fall out  
3 alphabetically and we can group them.

4 And then I would sit down with my staff  
5 member, Mr. Heit, probably sat down with Mr. Berkowitz,  
6 and we said these are the names that are in the  
7 checking account. Tell -- you know, let's talk about  
8 the ones that are relevant to the distribution process.  
9 And we probably went through that type of a process and  
10 came out with names and we talked about why they were  
11 included or excluded as the case may be. So it's a  
12 process of iteration -- it's an iterative process.  
13 We're going step-by-step-by-step to come up with the  
14 final answer.

15 Q Okay. Question, prior to looking at the bank  
16 accounts, okay, can you identify on this sheet which  
17 names Mr. Berkowitz told you?

18 A He probably -- we probably talked about ones like  
19 A&C Building and Industrial Maintenance.

20 Q Okay, that's one. Hold on for a minute. Go ahead.  
21 Did you talk about American Express?

22 A Sure.

23 Q Brian Hipple?

24 A Sure, he was certainly involved in this.

25 Q Buckingham Friends School?



Mr. Geisser - Recross

328

1 A Yes.

2 THE COURT: What does this matter, the fact  
3 that Mr. Berkowitz spoke to him about this?

4 MR. HIPPLE: Well --

5 THE COURT: What's the point of this? You're  
6 going to go through all of this. What's the point?

7 MR. HIPPLE: The point is that he was told  
8 what to look for.

9 THE COURT: What's your response to that?

10 THE WITNESS: Well, yeah, I mean we can -- we  
11 have discussion about things that are relevant. Mr.  
12 Berkowitz has the advantage of having sat through a  
13 number of depositions. He can begin to identify people  
14 like I'll just say by way of example, Melissa Moreno,  
15 probably sat down and explained to me what the  
16 connection of Melissa Moreno was to this picture.  
17 Those are the kinds of things that we would typically  
18 talk about.

19 MR. HIPPLE: Okay. But the other reason,  
20 Your Honor, is that a lot of -- a lot of these costs  
21 here and all are actually expenses, okay? And I can  
22 explain that as we go on, okay?

23 THE COURT: Okay.

24 MR. HIPPLE: That's the purpose of the  
25 question. They're not what to call -- give away money

Mr. Geisser - Recross

329

1 or whatever the word, seller's discretionary --

2 THE COURT: All right, well, you'll have a  
3 chance in your case to show that.

4 (Pause in proceedings.)

5 BY MR. HIPPLE:

6 Q You did not deem payments made to the employer of  
7 SCIX and Steel Seal Pro as SDE earnings, correct?

8 A I'm sorry, you're going to have to repeat that  
9 question.

10 Q Okay. You did not deem payments made to the  
11 employees of SCIX and Steel Seal Pro as SDE earnings?

12 A Payments that were made to employees were not part  
13 of SDE, in other words, distributions, that's correct.

14 Q SDE earnings.

15 A That would be an operating expense.

16 Q Correct?

17 A Correct.

18 (Pause in proceedings.)

19 Q Because worked performed by them necessary to  
20 operate -- operation of the business, correct?

21 A Typically, a business has employees that perform  
22 services and are paid wages, correct.

23 Q And you did not talk to any of the employees of  
24 SCIX or Steel Seal about their work they performed or  
25 the reason for the checks they received, correct?

Mr. Geisser - Recross

330

1 A Correct.

2 Q Similarly, a reimbursement of a business expense  
3 also would be legitimate business expense and not SDE,  
4 right?

5 A If it was a legitimate expense of the business,  
6 it's an expense.

7 Q Okay. If I own a business and I drive my car for  
8 business, I have to make deliveries with my car, okay,  
9 that's a business expense, is that not correct?

10 A Based on the way you described it, yes.

11 Q Yes. So the Volvo you put down here, did you  
12 consider that maybe Brian made deliveries every day and  
13 needed a car for business expense?

14 A My understanding was that that was -- that that was  
15 a personal car.

16 Q Where did you get that understanding?

17 A Probably from Mr. Berkowitz.

18 Q Oh, Mr. Berkowitz told you that that was a personal  
19 car?

20 A I'm imagining that's the case, yeah. I believe  
21 that to be the case. I mean there may have been  
22 something else at the time, but I don't have anything  
23 that comes to mind right now. And keep -- I have to  
24 keep in mind in this case that what you -- what you  
25 said is important, is it used in the delivery process?

Mr. Geisser - Recross

331

1 This is a product that is shipped, right?

2 Q No, it's --

3 A You take -- let me finish. You take orders over  
4 the internet and there's a process where they're pretty  
5 into the mails, I understand it, and shipped around the  
6 world.

7 Q Right.

8 A That -- so it's not some kind of a home delivery  
9 operation that we're talking about.

10 Q Well --

11 A So, you know, when we automatically -- there's a  
12 lot of people that automatically make assumption that  
13 if I drive my car from my house to the business, that  
14 that's a business car. That can be a point of some  
15 discussion, but I don't -- I'm not suggesting that I  
16 went through that level of analysis. My understanding  
17 was that it was a personal expense and I classified it  
18 accordingly.

19 Q Right. But, again, supposing that car was used to  
20 take the packages everyday to the post office and to go  
21 to the post office to pick up different things and  
22 products, and to go to the Staples to get different  
23 products for -- to do the packing, would that not be a  
24 business expense?

25 A Hypothetically, yes.

Mr. Geisser - Recross

332

1 Q Okay.

2 (Pause in proceedings.)

3 Q And you would agree that where money borrowed was a  
4 normal business expense needed for the business to  
5 operate, financial receivables, that such payments on  
6 that loan would be non-discretionary? I'm sorry. Is  
7 that correct?

8 Would you agree that where money borrowed was  
9 a normal business expense needed for the business to  
10 operate, financial receivables, that such payment on  
11 the loan would be non-discretionary, right?

12 A If it's a part of a business, there's lines of  
13 credit that are used to finance things on an ongoing  
14 basis, and it's part and parcel of the normal flow of  
15 the product and of the business. That could be  
16 considered an operating expense.

17 Now, I differentiate that from  
18 capitalization. If we have debts on the books that are  
19 non-operating, non-operating debt, that's totally  
20 different because you have to keep in mind what we're  
21 valuing here. The valuation that we're doing is the  
22 ability of this product to generate a revenue stream.

23 As I said earlier in my testimony, you could  
24 have a company that has a lot of debt on the books on  
25 it that has nothing to do -- that's nothing to do with

Mr. Geisser - Recross

333

1 the operation of that product. That's excluded from  
2 the SDE considerations.

3 If you're talking about something more  
4 limited that's fundamental to the way the business  
5 operates, and let me give you an example. If we're  
6 talking about you have to incur bank fees in order to  
7 process things through credit cards, that's a normal  
8 operating expense. There's a certain finance charge  
9 that's associated with that. That's certainly not --  
10 that's an operating expense. That's not what we're  
11 talking about here.

12 But if we're talking about debt that sits  
13 apart from the business itself, that is -- a  
14 distribution like that is -- can be considered SDE  
15 because it's financing the underlying capital of the  
16 business.

17 Q Okay. Give me one moment, please.

18 (Pause in proceedings.)

19 Q And what about payments to use a website. If a  
20 product is sold on the website, but website owned by  
21 another, and payment to use the website would be a  
22 legal business expense, a legitimate business expense?  
23 All right, let me read it again.

24 And what about payments to use a website? If  
25 product sold on a website, but website owned by

Mr. Geisser - Recross

334

1 another, and payments to use the website would be  
2 legitimate expense, correct?

3 A Yes.

4 Q Well, assuming that without the payment and no  
5 right to use the website? In other words, if there was  
6 no payment, they wouldn't have no right to use the  
7 website, right?

8 A Presumably.

9 Q No -- if needed a -- if needed website to advertise  
10 and sell the product, payments to use the website would  
11 be a business expense and not SDE, right?

12 A Correct.

13 Q Okay.

14 MR. HIPPLE: This is all going somewhere,  
15 Your Honor.

16 BY MR. HIPPLE:

17 Q And payments made to marketing companies to help  
18 the business, marketing companies, okay, improve hits  
19 on the internet, paid ads for this website businesses,  
20 those would not constitute seller discretionary  
21 earnings, is that correct?

22 A You're describing a business expense that sounds  
23 like it's a legitimate business expense.

24 Q Right. In other words, if I have to pay for paid  
25 ads to get my name of Steel Seal on the site, that's a

Mr. Geisser - Recross

335

1 business expense, right?

2 A Agreed. Yes.

3 Q If I have a company, SEO Company, and they do let's  
4 web site business for me, that's a business expense,  
5 correct?

6 A SEO?

7 Q I forget what SEO stands for, but it's a company  
8 that helps out for supporting of the website. That's a  
9 business expense.

10 A If you say it's a business expense, it's a business  
11 expense.

12 (Pause in proceedings.)

13 Q Testify that -- testified that deemed each of  
14 Teresa, Clement, Brian, and Melissa and any companies  
15 owned by them as insiders, but you have no personal  
16 knowledge as to how -- as to who owned each of the  
17 various corporation -- corporate defendants during 2009  
18 through 2012? Did I read that right?

19 (Pause in proceedings.)

20 A I'm sorry, that's a -- that's a complex question.  
21 I'm not sure I can answer it.

22 Q All right. Let me take a little bit of it, all  
23 right? Testified that deemed each of Teresa, Clement,  
24 Brian, and Melissa, and any company owned by them as  
25 insiders, that's half of the question.



Mr. Geisser - Recross

336

1 A Agreed.

2 Q But you have no personal knowledge as to owners --  
3 who owned each of the various corporations -- corporate  
4 defendants during 2009 through 2012?

5 A Other than what was in the pleadings.

6 Q And what was that?

7 THE COURT: Well, he's not going to recite  
8 the whole pleadings, but whatever is in the pleadings,  
9 that's what he relied upon.

10 BY MR. HIPPLE:

11 Q And, in fact, you also did not perform any  
12 investigation to determine who owned or where the  
13 offices or directors of the various corporations --  
14 corporate defendants, correct?

15 A I don't understand that question. You're going to  
16 have to read it back.

17 Q Well, it's better if he reads. Okay. And, in  
18 fact, you also did not perform any investigation to  
19 determine who owned or where the offices or directors  
20 of the various corporation -- corporate defendants? In  
21 other words, did you do an investigation on any of the  
22 corporate defendants?

23 A No.

24 Q Okay.

25 A Other than to know that they were insiders, they

Mr. Geisser - Recross

337

1 were related parties. What's important here is this  
2 is -- this is a series of company that have a lot of  
3 related parties. And, as accountants and valuers,  
4 we're sensitized to related parties.

5 Now, that's an important factor when we  
6 address a valuation project or forensic accounting  
7 project. So we -- as a basic step in terms of what  
8 we're doing, we try to identify who are the related  
9 parties.

10 Q You did not speak with any of the employees of any  
11 of the corporate defendants, right?

12 A Correct.

13 MR. BERKOWITZ: Objection, asked and  
14 answered. I'm sorry.

15 THE COURT: I'll overrule the objection.  
16 BY MR. HIPPLE:

17 Q And you did not have any conversation with the  
18 plaintiffs -- plaintiff, Ms. Concepcione, right?

19 A Correct.

20 Q And you did not review plaintiff's deposition prior  
21 to preparing your report, right?

22 A Correct.

23 Q And you did not review and depose -- all right.  
24 And you did not review the deposition of Mr. Clement  
25 Hipple before preparing your report?

Mr. Geisser - Recross

338

1 A Correct.

2 Q And you did not review Melissa Moreno's deposition,  
3 right?

4 A Correct.

5 Q And you did not consider the answers to plaintiff's  
6 complaint, right?

7 (Pause in proceedings.)

8 A Referring to my Exhibit H, documents considered, I  
9 would say no.

10 Q Okay.

11 (Pause in proceedings.)

12 Q And what about the defendants' response to  
13 plaintiff's interrogatories or requests for admission?  
14 Did you consider any of that discovery?

15 (Pause in proceedings.)

16 A Yes.

17 Q You did?

18 A It's in the list of documents considered. I'm  
19 looking at Exhibit H, item B, exhibits in support of  
20 motion for plaintiff's for injunctive relief, item B,  
21 "Response of Clement Hipple, Complete Group, Steel  
22 Seal, Plaintiff's Interrogatories."

23 Q Thank you. Just the two, right?

24 (Pause in proceedings.)

25 Q Regardless, you were told by counsel for plaintiff

Mr. Geisser - Recross

339

1 to assume that Brian Hipple, Clement Hipple, Melissa  
2 Moreno, were all owners or insiders of the various  
3 corporation -- corporate defendants, right?

4 A Yes.

5 Q Yes?

6 A Yes. But that was not inconsistent with the facts  
7 as I understood them.

8 Q With no factual basis?

9 A Well, I -- there's a lot of pleadings here. I mean  
10 we use -- we use the pleadings as a basis for, you  
11 know, writing the report and developing the analysis.  
12 So I think -- and a lot of these are done under oath,  
13 so the answer is no, we considered -- in the context of  
14 the documents we looked at, we consider that to be  
15 accurate representations.

16 (Pause in proceedings.)

17 Q Directing your attention to the document entitled  
18 "Documents Considered" attached to your report, agree  
19 that this document -- and I'll wait until you get to  
20 the document.

21 A I have it.

22 Q Okay. Agree that this document set forth the  
23 universe of documents and information you considered in  
24 preparing your report and coming to your opinion,  
25 correct?

Mr. Geisser - Recross

340

1 A Agreed, unless there was something it inadvertently  
2 overlooked.

3 Q Number five on your list of documents, "Documents  
4 Considered," makes reference to summaries of checks,  
5 items from bank statements prepared by client, right,  
6 and that's what you considered?

7 A Yes. When we were initially approached by Mr.  
8 Berkowitz, he had done some preliminary work that I  
9 believe were in Excel spreadsheets, and we took those  
10 Excel spreadsheets and we incorporated them after our  
11 own review of the data into our report.

12 We listed it that way simply because that's  
13 the way it was delivered to us, but that doesn't mean  
14 we didn't review it and manipulate the data in a way we  
15 thought was appropriate. In fact, I know that we did.  
16 We expanded our review much beyond what was initially  
17 given to us. So the --

18 Q So, basic --

19 A The answer to your question is yes, we received  
20 those initial Excel spreadsheets from the client  
21 because there's a lot of data entry that's involved in  
22 this process. There was no reason not to take that.  
23 And then we reviewed it, we edited it, and we  
24 manipulated it to a condition that we felt was  
25 appropriate.

Mr. Geisser - Recross

341

1 Q So, basically, you received Excel spreadsheets from  
2 Mr. Berkowitz that he prepared?

3 A My recollection is that we did initially receive  
4 documentation in that form.

5 Q Okay. Do you know how many sheets you received?

6 A My recollection from two years ago was it was  
7 probably some of the Wachovia documents, but I don't  
8 remember beyond that. I think that we had to take the  
9 other documents and we had them scanned into our  
10 systems. We had to manipulate them to derive the  
11 information out of the documents in order to be able to  
12 digitally manipulate the data.

13 Q All right. Do you remember the nature of the  
14 documents?

15 A Well, we had bank statements from Wachovia and we  
16 had bank statements from First National Bank of  
17 Newtown, so we had the physical documents. My  
18 recollection is we had the underlying checks to go with  
19 those as well.

20 The fact that we had received an initial  
21 spreadsheet from Mr. Berkowitz was just preliminary  
22 work that he had done. There was no need for us to  
23 re-key the same data, so we utilized that to the extent  
24 that we could in trying to make the process more  
25 efficient.

Mr. Geisser - Recross

342

1 Q So, basically, what he did, he gave you information  
2 that he kind of wanted you to follow?

3 A He gave us information to consider. He had a  
4 certain feeling about the case, a case theory if you  
5 will, and it's his case to prove. He pointed out  
6 certain things to us. We accepted that information for  
7 what it was. We did our own analysis and we came to  
8 our own conclusions.

9 Q And you found nothing wrong with the information  
10 that he submitted?

11 A Absolutely, I will not say that. You know, we --  
12 in fact, we had conversations where I said to Mr.  
13 Berkowitz, you know, we don't -- we don't think this is  
14 sufficient to accomplish what we need to do here, we  
15 need to do additional work, and we did.

16 Q Is that -- is that a normal process for the  
17 attorney to give the expert witness information?

18 A Absolutely.

19 Q It is? Okay.

20 A Yeah.

21 Q I just didn't realize it.

22 (Pause in proceedings.)

23 Q Did you ever have any communication with Teresa  
24 Hipple about these summaries?

25 A No.

Mr. Geisser - Recross

343

1 Q Did you know that she prepared them?

2 A Let's back up. What summaries are we talking  
3 about?

4 Q I guess the interest summaries, the payment  
5 summaries, bank statements.

6 A As far as I was concerned, it was information that  
7 came through Mr. Berkowitz. I had no idea whether he  
8 had -- whether he did it or a paralegal did it or --

9 Q Okay. So --

10 A -- whoever did it. It was really irrelevant as  
11 long as we could rely on it. We determined the  
12 accuracy of the information because we looked at the  
13 bank statements.

14 If you look at the supporting documentation  
15 that's in this report, you're going to see that we go  
16 through month-by-month and we tie out beginning  
17 balance, pluses, minuses, ending balance, and that we  
18 repeat that process through every one of the bank  
19 statements so that we know that we were dealing with a  
20 complete set of records and we've considered everything  
21 in that universe.

22 Q So, basically, the answer is you didn't know that  
23 Teresa prepared it, right?

24 A Correct.

25 (Pause in proceedings.)



Mr. Geisser - Recross

344

1 A Accepting that as fact.

2 Q I think you answered this question, but I'm --

3 THE COURT: Well, if he answered it, I don't  
4 want to hear it again.

5 MR. HIPPLE: Your Honor, this document cost  
6 me about \$400,000.

7 THE COURT: I'm not stopping you. You can  
8 read it.

9 MR. HIPPLE: Okay.

10 THE COURT: You just said you think you asked  
11 it before. I don't want to have you ask the same  
12 question.

13 MR. HIPPLE: All right.

14 THE COURT: Now --

15 MR. HIPPLE: Okay.

16 THE COURT: -- go ahead. I'm not inhibiting  
17 you in any way.

18 MR. HIPPLE: All right.

19 THE WITNESS: Your Honor, I just -- can we  
20 take a bathroom break?

21 THE COURT: All right, we'll take a five  
22 minute break. How much longer do you have? Just tell  
23 me.

24 MR. HIPPLE: Truthfully, Your Honor, I'm on  
25 page 13.

Mr. Geisser - Recross

345

1 THE COURT: And how many pages is there --  
2 are there?

3 MR. HIPPLE: 39. And the good stuff is  
4 towards the end I believe.

5 THE COURT: Okay. Well, look, we're going to  
6 break then because it sounds like you're going to be at  
7 least another hour. I'm on a train schedule, so I have  
8 to -- I'm limited on when I can get home.

9 MR. HIPPLE: I can drive you home, Your  
10 Honor.

11 THE COURT: No, you're not driving me home.  
12 All right, I'll see you tomorrow at 9:00, all right?  
13 We'll just take it from there. I have -- I'm leaving  
14 at 1:00 tomorrow.

15 MR. HIPPLE: I realize that, Your Honor.

16 THE COURT: We're only staying until 1:00.  
17 Okay.

18 MR. BERKOWITZ: And I've got the three  
19 witnesses under subpoena that have to be through by  
20 1:00 also.

21 THE COURT: Right. Is one the attorney?

22 MR. BERKOWITZ: Yes.

23 THE COURT: All right, so we'll need to  
24 discuss that, too, because I haven't ruled on that.  
25 And I got a letter that was copied to you from the law

Mr. Geisser - Recross

346

1 firm objecting.

2 MR. BERKOWITZ: Your Honor, and they have not  
3 raised a single reason that was not included in the  
4 motion in limine that they filed with Judge DuBois.

5 THE COURT: All right, well, we got to have a  
6 hearing -- we're going to have to hear a hearing  
7 tomorrow. I want to also hear Mr. Hipple's position as  
8 to what his position is too, which he hasn't really  
9 voiced since he's representing himself now.

10 MR. HIPPLE: Okay.

11 THE COURT: But I'm not going to do that now.  
12 We'll do that tomorrow.

13 MR. HIPPLE: As far Michael, the attorney?

14 THE COURT: Yes.

15 MR. HIPPLE: Yes, I think it's -- oh, you  
16 don't want to hear it now.

17 THE COURT: No, go ahead. What?

18 MR. HIPPLE: You don't want to hear it now,  
19 do you?

20 THE COURT: No, go ahead.

21 MR. HIPPLE: I think it -- I think it's  
22 outrageous and ridiculous.

23 THE COURT: So you oppose him being a  
24 witness?

25 MR. HIPPLE: Well, because he's just trying

Mr. Geisser - Recross

347

1 to bring him in because he gave directions to Melissa,  
2 okay, and he spoke with Melissa or somebody gave  
3 direct -- or he gave -- told somebody to give  
4 directions to Melissa to pick up my check, who was the  
5 only person that I could trust.

6 THE COURT: All right, we're going to have a  
7 hearing tomorrow. I'm not going to hear it now.

8 MR. HIPPLE: Okay. I just want to say that  
9 you told me, Mr. Berkowitz, that you're not going to  
10 elicit attorney/client privilege.

11 MR. BERKOWITZ: That's correct.

12 THE COURT: All right. So then all I want to  
13 know tomorrow is what you're going to ask him and  
14 what's the nature or the offer of proof.

15 MR. HIPPLE: Okay.

16 MR. BERKOWITZ: And there was a letter in  
17 the --

18 THE COURT: Because then we'll hear -- and I  
19 want to hear from the attorney for the law firm too.  
20 Okay, thanks. See you tomorrow at 9:00.

21 (Proceedings adjourned, 5:43 p.m.)

22 \* \* \*

I N D E XPLAINTIFF'S WITNESS    DIRECT    CROSS    REDIRECT    RECROSS

Clement Hipple

By Mr. Berkowitz                      4

Wayne Geisser

By Mr. Berkowitz                      167                                      271

By Mr. Hipple                                      217                                      276

\* \* \*

CERTIFICATION

I, Michael Keating, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

10/4/15  
Date

*Michael Keating*  
Michael Keating